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PENNSYLVANIA BULLETIN

Volume 29
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Number 43
Pages 5495—5604

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Ambulatory Surgical Facilities

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State Employees' Retirement Board
Turnpike Commission

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**Latest Pennsylvania Code Reporter
(Master Transmittal Sheet):**

No. 299, October 1999

PENNSYLVANIA



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Pennsylvania Bulletin

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

Adoption, Amendment or Repeal of Regulations

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

Bulletin before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number and page number. Example: Volume 1, *Pennsylvania Bulletin*, page 801 (short form: 1 Pa.B. 801).

Pennsylvania Code

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes as soon as they occur. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code*, § 1.1 (short form: 10 Pa.Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

How to Find Documents

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

The *Pennsylvania Bulletin* also publishes a quarterly List of Pennsylvania Code Sections Affected which lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

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Printing Format

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where “no fiscal impact” is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

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Ambulatory Surgical Facilities

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THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CHS. 20 AND 100]

Order Adopting New Rule 143, Amending Rule 23, Revising the Comment to Rule 107, Joining Rules 141 and 142 as New Rule 141 and Renumbering Present Rule 143; No. 256, Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the procedures for reinstituting charges that have been withdrawn or dismissed at, or prior to, a preliminary hearing, and for an attorney for the Commonwealth, following the refiling of a complaint, to request that a different issuing authority be assigned to preside at the preliminary hearing. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 8th day of October, 1999, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 28 Pa.B. 1505 (March 28, 1998), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 706); and a Final Report to be published with this Order.

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

1. new Pa.R.Crim.P. 143 is promulgated,
2. the amendments to Rule 23 are adopted,
3. the revision of the Comment to Rule 107 is approved,
4. the joinder of Rules 141 and 142 as new Rule 141 is adopted, and
5. Rule 143 is renumbered Rule 142, all in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2000.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 100. PROCEDURE IN COURT CASES

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

[This is an entirely new rule.]

Rule 143. Reinstating Charges Following Withdrawal or Dismissal.

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, the attorney for the Commonwealth may reinstitute the charges by approving, in writing, the refiling of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges.

(B) Following the refiling of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth

determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 23 motion with the clerk of courts requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth the reasons for requesting a different issuing authority.

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000. New Rule 143 adopted October 8, 1999, effective January 1, 2000.

Comment

This rule provides the procedures for reinstituting criminal charges following their withdrawal or dismissal at, or prior to, the preliminary hearing.

The authority of the attorney for the Commonwealth to reinstitute charges that have been dismissed at the preliminary hearing is well established by case law. See, e.g., *McNair's Petition*, 187 A. 498 (Pa. 1936); *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997). This authority, however, is not unlimited. First, the charges must be reinstituted prior to the expiration of the applicable statute(s) of limitations. See *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997). In addition, the courts have held that the reinstitution may be barred in a case in which the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. See *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997); *Commonwealth v. Shoop*, 617 A.2d 351 (Pa. Super. 1992).

The decision to reinstitute charges must be made by the attorney for the Commonwealth. Therefore, in cases in which no attorney for the Commonwealth was present at the preliminary hearing, the police officer may not refile the complaint without the written authorization of the attorney for the Commonwealth. See Rule 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option) for procedures for prior approval of complaints.

Pursuant to paragraph (A), in the usual case, charges will be reinstituted by filing a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges. However, there may be cases in which the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing, such as when an error of law is made by the issuing authority in finding that the Commonwealth did not sustain its burden to establish a prima facie case. Paragraph (B) requires that, in these cases, the attorney for the Commonwealth must file a petition with the court of common pleas requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. For the procedure for requesting assignment of a different issuing authority, see Rule 23.

See Chapter 9000 for the procedures governing motions.

Committee Explanatory Reports:

Final Report explaining new Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

CHAPTER 20. ISSUING AUTHORITIES: VENUE, LOCATIONS, AND RECORDING OF PROCEEDINGS

Rule 23. Continuous Availability and Temporary Assignment of Issuing Authorities.

[(a)] (A) Continuous Availability

* * * * *

(2) The **[district justice]** issuing authority assigned to be on duty after business hours shall set bail as provided in Chapter 4000, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.

[(b)] (B) Temporary Assignment

(1) The president judge may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed:

(a) to satisfy the requirements of paragraph **[(a)] (A) (1) [,]**;

(b) to insure fair and impartial proceedings **[,]**;

(c) to conduct a preliminary hearing pursuant to **Rule 143(B)**; or

(d) otherwise for the efficient administration of justice.

One or more issuing authorities may be so assigned to serve one or more magisterial districts.

(2) Whenever a temporary assignment is made under this rule, notice of such assignment shall be filed with the clerk of courts where it shall be available for police agencies and other interested persons.

(3) A motion may be filed requesting a temporary assignment under paragraph **[(b)] (B)(1)** on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

(4) A motion shall be filed requesting a temporary assignment under paragraph (B)(1)(c) whenever the attorney for the Commonwealth elects to proceed under Rule 143(B) following the refile of a complaint.

Official Note: Formerly Rule 152, adopted January 16, 1970, effective immediately; amended and renumbered Rule 23 September 18, 1973, effective January 1, 1974; amended October 21, 1983, effective January 1, 1984; amended February 27, 1995, effective July 1, 1995 **[.]**; **amended October 8, 1999, effective January 1, 2000.**

Comment

This rule is intended to impose the responsibility on the president judge to prevent the violation of the rights of defendants caused by the lack of availability of the **[district justice]** issuing authority.

Paragraph **[(a)] (A)(2)** requires a **[district justice]** issuing authority on duty after business hours to set bail, as provided by law, and to accept deposits of bail in any case pending in any magisterial district within the

judicial district, so that a "defendant may be admitted to bail on any date and at any time." Rule 4001 **[(b)] (B)**.

Nothing in this rule is intended to preclude judicial districts from continuing established procedures or establishing new procedures for the after-hours acceptance of deposits of bail by a representative of the clerk of courts' office.

Paragraphs **[(b)] (B)(1)(b)** and (3) make explicit the authority of president judges to assign issuing authorities when necessary to insure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as "change of venue" at the district justice level. See, e.g., *Sufrich v. Commonwealth*, **[68 Pa. Commw. 42,] 447 A.2d 1124 (Pa. Cmwlth. 1982)**.

The motion procedure of paragraph **[(b)] (B)(3)** is intended **[only]** to apply when a party requests temporary assignment to insure fair and impartial proceedings. The president judge may, of course, order a response and schedule a hearing with regard to such a motion. **However, this paragraph is not intended to require "a formal hearing...beyond the narrow context of a motion for temporary assignment of issuing authority to insure fair and impartial proceedings predicated upon allegations which impugn the character or competence of the assigned issuing authority and which seek the recusal of the assigned issuing authority."** See *Commonwealth v. Allem*, 532 A.2d 845 (Pa. Super. 1987) (filing and service of the written motion and answer, and allowance of oral argument were more than adequate to meet the rule's requirements).

Paragraphs (B)(1)(c) and (4) govern those situations in which the attorney for the Commonwealth, after refile of the complaint following the withdrawal or dismissal of any criminal charges at, or prior to, a preliminary hearing, determines that the preliminary hearing should be conducted by a different issuing authority. See also Rule 143 (Reinstituting Charges following Withdrawal or Dismissal). Under Rule 143, the president judge may designate another judge within the judicial district to handle reassignments.

The motion procedure is not intended to apply in any of the many other situations in which president judges make temporary assignments of issuing authorities; in all these other situations the president judges may make temporary assignments on their own without any motion, notice, response, or hearing.

Committee Explanatory Reports:

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 936 (March 18, 1995).

Final Report explaining the October 8, 1999 amendments concerning motions for temporary assignment of issuing authority following the reinstitution of criminal charges published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

CHAPTER 100. PROCEDURE IN COURT CASES

PART II. COMPLAINT PROCEDURES

Rule 107. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option.

* * * * *

Official Note: Adopted December 11, 1981, effective July 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 107 and amended August 9, 1994, effective January 1, 1995 [.] ; **Comment revised October 8, 1999, effective January 1, 2000.**

Comment

* * * * *

See Rule 2002A for a similar option as to search warrant applications.

See Rule 143 for the procedures requiring the written approval of the attorney for the Commonwealth for the refiling of a complaint.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report concerning the October 8, 1999 Comment revision published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

[This is an entirely new rule.]

Rule 141. Preliminary Hearing; Continuances.

(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

- (1) assume charge of the prosecution; and
- (2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

- (1) be represented by counsel;
- (2) cross-examine witnesses and inspect physical evidence offered against the defendant;
- (3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;
- (4) offer evidence on the defendant's own behalf, and testify; and
- (5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant.

(E) *Continuances*

The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

- (1) the grounds for granting each continuance;
- (2) the identity of the party requesting such continuance; and

(3) the new date and the reasons that the particular date was chosen.

Official Note: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000.

Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.

For the contents of the transcript, see Rule 26.

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining new Rule 141 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

Rule 141. Preliminary Hearing. Rescinded.

[(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

- (1) assume charge of the prosecution; and**
- (2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.**

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

- (1) be represented by counsel;
- (2) cross-examine witnesses and inspect physical evidence offered against the defendant;
- (3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;
- (4) offer evidence on the defendant's own behalf, and testify; and
- (5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant.]

Official Note: Formerly Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998 [.] ; rescinded October 8, 1999, effective January 1, 2000, and replaced by new Rule 141.

[Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.]

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining the October 8, 1999 rescission published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

Rule 142. Continuance of a Preliminary Hearing. **Rescinded.**

[The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

- (1) the grounds for granting each continuance,
- (2) the identity of the party requesting such continuance, and
- (3) the new date and the reasons that the particular date was chosen.]

Official Note: Formerly Rule 124 adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986 [.] ; rescinded October 8, 1999, effective January 1, 2000, and replaced by new Rule 141(E).

[Comment

For the contents of the transcript, see Rule 26.]

Committee Explanatory Reports:

Final Report explaining the October 8, 1999 rescission published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

Rule [143] 142. Disposition of Case at Preliminary Hearing.

(a) If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged. In either event, the decision of the issuing authority shall be publicly pronounced.

(b) When the defendant has been held for court, the issuing authority shall:

(1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 4008(a).

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996 [.] ; renumbered Rule 142 October 8, 1999, effective January 1, 2000.

Comment

Paragraph (b) was amended in 1983 to reflect the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases where, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 109 and 110.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the October 8, 1999 renumbering of Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

FINAL REPORT¹

New Pa.R.Crim.P. 143, Amendments to Rule 23, Revision of the Comment to Rule 107, Joinder of Rules 141 and 142 as New Rule 141, and Renumbering of Former Rule 143

Reinstitution of Criminal Charges Following Withdrawal or Dismissal at, or Prior to, Preliminary Hearing

On October 8, 1999, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted new Pa.R.Crim.P. 143 (Reinstituting Charges Following Withdrawal or Dismissal), amended Rule 23 (Continuous Availability and Temporary Assignment of Issuing Authorities), revised the Comment to Rule 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option), combined Rules 141 (Preliminary Hearing) and 142 (Continuance of a Preliminary Hearing), and renumbered former Rule 143 (Disposition of Case at Preliminary Hearing), effective January 1, 2000. New Rule 143 and the correlative rule changes provide the procedures for reinstituting charges that have been withdrawn or dismissed at, or prior to, a preliminary hearing, and provide for an attorney for the Commonwealth, following the refile of a complaint, to request that a different issuing authority be assigned to preside at the preliminary hearing.

Background

The Committee began its consideration of providing in the Criminal Rules procedures for the reinstitution of criminal charges after receiving correspondence that raised concerns about the lack of uniform, statewide procedures for refile of a criminal complaint following the dismissal of a case at the preliminary hearing. The correspondents pointed out that, without any procedures in the Criminal Rules addressing the reinstitution of criminal charges, the attorneys for the Commonwealth follow informal procedures that vary from judicial district to judicial district, and even from case to case. In addition, they suggested that because of the absence of uniform, statewide procedures, sometimes defendants are unfairly and unnecessarily subjected to multiple "rearrests" for the same offense. Finally, the correspondents indicated that, in the usual case, the defendant is not provided with notice of the reinstitution or an opportunity to object to the reinstitution of proceedings, or to a "change in venue" in those situations in which the attorney for the Commonwealth is able to have a different issuing authority assigned to conduct the preliminary hearing.

In considering the problems concerning the reinstitution of criminal charges raised by the correspondents, the Committee reviewed Pennsylvania case law to see how

the courts address the charging function of the attorneys for the Commonwealth in rearrest situations, and for guidance from the courts concerning proceeding with a case after the withdrawal or dismissal of charges. We found that the Pennsylvania courts have consistently held that the attorney for the Commonwealth has the discretion to reinstitute a criminal case after it has been withdrawn or dismissed prior to the conclusion of the preliminary hearing. In fact, the courts have held that if the Commonwealth wants to continue prosecution following the withdrawal or dismissal of criminal charges, the attorney must proceed by reinstituting the charges, rather than appealing the decision of the district justice or seeking a writ of certiorari. However, there are limitations on this discretion, such as in those cases in which (1) there is unreasonable intrusion, coercion, or harassment of the defendant by the government, (2) the process of reinstituting the criminal charges would result in prejudice to the defendant, or (3) the statute of limitations has expired. See, generally, *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997). Finally, our research revealed that the courts generally have declined to mandate by case law one procedure for handling these cases, and themselves have addressed the matter only on a case-by-case basis.

In view of the case law, and in recognition of the facts that (1) the Criminal Rules are silent on procedures in rearrest cases, and (2) there is an apparent need to have procedures for the reinstitution of charges in the Criminal Rules, the Committee agreed to survey the district attorneys to learn how, exactly, they proceed in these cases. We received 43 responses to the survey, which indicated that:

1. By and large, the procedures used in these "rearrest" cases are informal, and used only on a case-by-case basis.
2. In most judicial districts, the district attorney has the discretion to decide whether the criminal charges should be reinstituted. There are some counties, however, in which the district attorney must seek permission from the president judge to refile the complaint, or the district attorney is limited to one refile of the criminal charges.
3. Some attorneys for the Commonwealth refile a complaint with a different issuing authority; some refile a complaint with the same issuing authority and have a different issuing authority assigned to conduct the preliminary hearing. The district attorneys are already using Rule 23 as the tool to have another issuing authority assigned to the case. In some judicial districts, however, the burden is upon the issuing authority to request that the case be transferred to another issuing authority.
4. The number of cases in which the district attorneys determine that charges should be reinstituted is relatively few; the number of cases in which the district attorneys determine that another issuing authority should preside over the preliminary hearing is fewer.

Although the responses revealed that the procedures that are being used vary among the judicial districts, and even from case to case, we found that many district attorneys are refile of the complaint with the same issuing authority, and some are requesting the reassignment of an issuing authority by filing a Rule 23 motion in the court of common pleas. Based on this "commonality," the Committee agreed to use these two concepts as a basis for the new procedures.

¹The Committee's Final Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

Discussion of Rules

A. New Rule 143 (Reinstituting Charges Following Withdrawal or Dismissal)

New Rule 143 sets forth the procedure for reinstituting charges following a withdrawal or dismissal, and for requesting that a different issuing authority be assigned to conduct the preliminary hearing. The rule is divided into two paragraphs. Paragraph (A) provides that, in all cases, following the withdrawal or dismissal of charges, an attorney for the Commonwealth may reinstitute proceedings by authorizing, in writing, the refile of a complaint with the issuing authority who dismissed or permitted the withdrawal of charges. This provision contemplates that someone other than a district attorney, such as a police officer or other authorized individual, may refile the complaint, but only if they have written authorization from the attorney for the Commonwealth.

Paragraph (B) establishes procedures for those limited situations in which, following the refile of a complaint, the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing. It provides that after the complaint is refiled, the attorney for the Commonwealth must file a motion in the court of common pleas pursuant to Rule 23 (Continuous Availability and Temporary Assignment of Issuing Authority) to request a "temporary assignment" of a different issuing authority and, in that motion, set forth the reasons for the request. The Rule 23 motion procedure will act as a filtering device to prevent unreasonable government intrusion, coercion, or harassment of the defendant, and will promote the balancing test discussed in *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997) (the need of the Commonwealth to re-present its case against the due process requirement that individuals shall be free from unreasonable and unnecessary government coercion).

The Comment cites relevant case law to (1) explain that it is the decision of the attorney for the Commonwealth to reinstitute charges, and (2) identify the limitations on this authority. It also makes it clear that an individual, such as a police officer, may reinstitute the criminal proceedings, but that before the proceedings may be reinstituted, the written approval of the attorney for the Commonwealth is required. In addition, the Comment (1) clarifies that in all cases charges will be reinstituted by filing a complaint with the issuing authority who dismissed the charges or permitted the withdrawal, and (2) provides guidance about when the paragraph (B) procedure concerning those instances in which the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing is triggered. Finally, the Comment includes cross-references to Rule 23 for the procedure to request assignment of a different issuing authority, and Chapter 9000, governing motions procedures, to emphasize that the defendant must be served with a copy of the Rule 23 motion, thus providing the defendant with the opportunity to challenge

the temporary assignment and the reinstitution of charges.

B. Rule 23 (Continuous Availability and Temporary Assignment of Issuing Authority)

Rule 23 provides the procedures for insuring the continuous availability of issuing authorities, and for the temporary assignment of issuing authorities in certain circumstances. Rule 23 has been amended to include two new paragraphs so that its application to new Rule 143 would be understood. Paragraph (B)(1)(c) provides that an issuing authority may be assigned to serve temporarily another magisterial district "to conduct a preliminary hearing pursuant to Rule 143(B)" after the refile of a complaint. Paragraph (B)(4) requires that a motion requesting a temporary assignment under paragraph (B)(1)(c) be filed when the attorney for the Commonwealth elects to proceed under Rule 143(B).

The Comment has been revised to include a provision clarifying that a formal hearing on a Rule 23 motion is only required when the temporary assignment is based on allegations which impugn the character or competence of the assigned issuing authority, and to make it clear that a formal hearing would not be required in every case in which reassignment is requested under new Rule 143.

C. Rule 107 (Approval of Police Complaints and Arrest Warrants by Attorney for the Commonwealth—Local Option)

Rule 107 provides that the district attorney of any county may require, prior to the filing of a criminal complaint or an arrest warrant, the approval by an attorney for the Commonwealth. This rule, however, only requires approval in those counties in which the district attorney has filed a certification with the court of common pleas. See Rule 107(b). The Rule 107 Comment has been revised to include a cross-reference to new Rule 143 to emphasize that, unlike the procedures set forth in Rule 107, under new Rule 143, written approval by the attorney for the Commonwealth is required in all cases in which criminal charges are reinstituted by the refile of a complaint.

D. Rules 141 and 142, and former Rule 143: Placement of New Rule 143

Because the withdrawal or dismissal of criminal charges only occurs at or before the preliminary hearing, the new procedures concerning reinstitution of criminal proceedings have been placed near the rules addressing the disposition of cases at the preliminary hearing. To make room for the new rule, Rules 141 (Preliminary Hearing) and 142 (Continuance of a Preliminary Hearing) have been joined to make one rule, former Rule 143 (Disposition of Case at Preliminary Hearing) has become Rule 142, and the new rule has been numbered 143.

[Pa.B. Doc. No. 99-1792. Filed for public inspection October 22, 1999, 9:00 a.m.]

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 62]

Motor Vehicle Physical Damage Appraisers

The Insurance Department (Department) amends Chapter 62 (relating to motor vehicle physical damage appraisers), to read as set forth in Annex A. The Department is publishing the amendments as a final-form rulemaking.

Statutory Authority

The final-form regulations are adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); section 320 of The Insurance Department Act of 1921 (40 P. S. § 443); and the Motor Vehicle Physical Damage Appraiser Act (act) (63 P. S. §§ 851—863).

Comments and Response

A notice of proposed rulemaking was published at 29 Pa.B. 655 (February 6, 1999) with a 30-day comment period ending March 8, 1999. During the 30-day comment period, comments were received from Automotive Service Association (ASA), Automotive Service Professionals of Pennsylvania (ASP), Michael K. Burke, Crawford's Auto Center, Inc. (Crawford's), Richard R. Diehl, Engle's Frame & Body Service (Engle's), Hedlund Glass Company (Hedlund), The Insurance Federation of Pennsylvania, Inc. (IFP), Pennsylvania Automotive Recycling Trade Society (PARTS), the Pennsylvania Collision Trade Guild (PCTG), Progressive Insurance Company (Progressive), D.J. Rudolph, State Farm Insurance Company (State Farm) and Sterling Autobody (Sterling). During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. A separate comment and response document has been prepared to address these comments and is available upon request.

Affected Parties

The rulemaking applies to appraisers licensed to do the business of appraising motor vehicles in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department due to the amendments.

General Public

There will be no fiscal impact to the public.

Political Subdivisions

The rulemaking will not impose additional costs on political subdivisions.

Private Sector

The rulemaking will not impose additional costs on appraisers doing the business of appraising motor vehicles in this Commonwealth.

Paperwork

The adoption of the rulemaking will not impose additional paperwork on the Department; however, new disclosure requirements will be required of the appraisal industry.

Effectiveness/Sunset Date

This rulemaking becomes effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

Contact Person

Questions regarding this rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429.

In addition, questions or comments may be e-mailed to psalvato@ins.state.pa.us or faxed to (717) 705-3873.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 6, 1999, the Department submitted a copy of this final-form rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted final-form rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

In preparing this final-form rulemaking, the Department considered all comments received from IRRC, the Committees and the public. This final-form rulemaking was deemed approved by the Senate and House Committees on September 13, 1999. In accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), IRRC met on September 23, 1999, and approved the final-form rulemaking in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 62, are amended by amending §§ 62.1—62.3, and by deleting § 62.4 to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5357 (October 9, 1999).)

Fiscal Note: Fiscal Note 11-149 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART II. AUTOMOBILE INSURANCE

CHAPTER 62. MOTOR VEHICLE PHYSICAL DAMAGE APPRAISERS

§ 62.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Motor Vehicle Physical Damage Appraiser Act (63 P. S. §§ 851—863).

Aftermarket crash part—A nonoriginal equipment manufacturer (non-OEM) replacement part, either new or used, for any of the nonmechanical parts that generally constitute the exterior of the motor vehicle, including inner and outer panels.

Appraisal—

(i) A written monetary estimate of physical damage sustained to a motor vehicle when the making of the estimate is assigned in order to allow the return of the vehicle to its predamaged condition.

(ii) The term includes estimates made by the insurer, its employees, its agents or related entities or individuals or entities assigned to make the estimate.

Appraiser—A natural person in this Commonwealth who makes appraisals of motor vehicle physical damage.

Commissioner—The Insurance Commissioner of the Commonwealth.

Consumer—The owner of the motor vehicle which has sustained damage or the owner's representative.

Dealer—An individual licensed, active and knowledgeable in the sale of used motor vehicles similar to that being appraised.

Insurer—All companies, associations and exchanges engaged in the insurance business of insurance companies and self-insurers.

Motor vehicle—A motorized device, including a trailer attached thereto, in, upon or by which a person or property is or may be transported or drawn upon a public highway.

Predamaged condition—The function and appearance of the motor vehicle just prior to when the damage in question was sustained.

§ 62.2. Experience and fitness requirements for licensing.

(a) In addition to the requirements in sections 3, 4, 8 and 11 of the act (63 P. S. §§ 853, 854, 858 and 861), to qualify to take the examination required for appraisers, an applicant shall establish competency to fulfill the responsibility of being an appraiser.

(1) Competency may be demonstrated by providing written documentation of one of the following:

(i) A minimum of 6 months continuous experience within the previous 3 years at an occupation, such as body repair, that directly involves the estimation of physical damage to motor vehicles.

(ii) Successful completion of education or training related to appraising motor vehicle physical damage taken within the previous 3 years.

(2) The applicant shall provide additional information relating to experience, education or training to the Commissioner or a designee upon request.

(b) An application for a license may be denied for any of the following:

(1) The applicant has provided incorrect, misleading or incomplete answers to interrogatories on forms incidental to applying for a license.

(2) The applicant has been denied a license or has had an existing license revoked, suspended or not renewed by the Department or a regulatory authority in another state, territory or possession of the United States, or in the District of Columbia, or the Canadian provinces.

(3) The applicant does not possess the professional competence and trustworthiness required to engage in conducting motor vehicle appraisals.

(4) An applicant has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a felony in a court of competent jurisdiction, or has pleaded guilty, entered a plea of nolo contendere or been found guilty of criminal conduct which relates to the applicant's suitability to conduct motor vehicle appraisals.

(i) Examples of criminal violations which the Department may consider related to the applicant's suitability to engage in the business of an appraiser include: unlawful practices, embezzlement, obtaining money under false pretenses, conspiracy to defraud, bribery or corrupt influence, perjury or false swearing, unlicensed activity or a criminal offense involving moral turpitude or harm to another.

(ii) Examples of violations or incidents which the Department will not consider related to the applicant's suitability to engage in the business of an appraiser are all summary offenses, records of arrests if there is no conviction of a crime based on the arrest, convictions which have been annulled or expunged or convictions for which the applicant has received a pardon from the Governor.

(5) If applicable, applicants shall also comply with the insurance-related provisions in sections 320 and 603(a) of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C.A. §§ 1033 and 1034).

(6) The applicant has unpaid any overdue amounts, including, fees and civil penalties, owing to the Department.

§ 62.3. Applicable standards for appraisal.

(a) The appraisal:

(1) Shall be signed by the appraiser before the appraisal is submitted to the insurer, the consumer or another involved party. The appraiser may utilize an electronic signature.

(2) May not use abbreviations or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of the abbreviations and symbols is included.

(b) In addition to the requirements in the act, the appraisal shall contain a written disclosure which includes the following:

- (1) The dollar amount of the appraisal.
- (2) A statement that costs above the appraised amount may be the responsibility of the vehicle owner.
- (3) A statement that there is no requirement to use any specified repair shop.
- (4) A statement informing the consumer that information regarding repair facilities which will be able to repair the vehicle for the appraised amount is available from the insurer. If the consumer receives information from the insurer, the information shall include disclosure that there is no requirement to use any specified repair shop.
- (5) A description of repairs, known at the time of appraisal, necessary to return the vehicle to its predamaged condition, including labor involved, cost of all parts, necessary painting or refinishing and all sublet work to be done.
- (6) Incidental charges, known at the time of appraisal, including towing, protective care, custody, storage, depreciation, battery and tire replacement.
- (7) Applicable sales tax.
- (8) The date, if any, after which an insurer will not be responsible for any related towing services or storage charges, known at the time of appraisal, and after which the charges will be the responsibility of the consumer.
- (9) The location where the listed parts are available in a condition equivalent to, or better than, the condition of the replaced parts prior to the accident.
- (10) If the appraisal includes aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts, and that if the use of an aftermarket crash part voids the existing warranty on the part being replaced or any other part, the aftermarket crash part shall have a warranty equal to or better than the remainder of the existing warranty.
- (11) Identification of all aftermarket crash parts and a definition of aftermarket crash parts consistent with § 62.1 (relating to definitions), if these parts are used.

(c) An appraisal for the repair of the motor vehicle shall be made in the amount necessary to return the motor vehicle to its predamaged condition. If the consumer wishes to repair the motor vehicle to a condition better than the predamaged condition, the appraisal need only specify the cost of repairing the vehicle to its predamaged condition.

(d) In the appraisal of salvage value, the following standard shall be used:

- (1) If the salvage value of the vehicle being appraised is known or could reasonably be determined, the appraiser shall disclose to the consumer in writing:
 - (i) The salvage value.
 - (ii) The provisions of 75 Pa.C.S. § 1117(a) (relating to vehicle destroyed, dismantled, salvaged or recycled), requiring the filing of an application for certificate of salvage with the Department of Transportation. See 75 P. S. § 1117.
 - (iii) Additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.

(2) If the salvage value is listed, the appraiser shall disclose to the consumer in writing:

- (i) The name and address of each salvage bidder.
- (ii) The amount.
- (iii) The expiration date of each salvage bid known.

(3) If the ownership and possession of the damaged motor vehicle is not retained by the owner or the owner's representative, this subsection dealing with salvage value is inapplicable.

(e) The appraised value of the loss shall be the replacement value of the motor vehicle if the cost of repairing a motor vehicle exceeds its appraised value less salvage value, or the motor vehicle cannot be repaired to its predamaged condition.

(1) Under this subsection, replacement value under the policy provisions covering the total loss of a motor vehicle including an unrecovered motor vehicle shall be determined by one of the following methods:

(i) *Guide source method.* The appraiser shall calculate the average of two figures reflecting the retail book value of a vehicle of like kind and condition, as provided by guide sources approved by the Commissioner. A listing of approved guide sources will be published once a year in the *Pennsylvania Bulletin*. The appraised value shall be adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. No other deductions may be taken except for salvage and then only if the owner elects to retain the vehicle.

(ii) *Actual cost method.* The appraiser shall determine the actual cost of purchase of an available motor vehicle of like kind and quality in condition similar to or better than the motor vehicle being appraised in its predamaged condition. The appraiser shall specify, in writing, the location of the vehicle of like kind and quality.

(iii) *Dealer quotation method.* The appraiser shall consult with dealers or other persons knowledgeable in the field to secure quotations as to the value of the motor vehicle being appraised. At least two quotations shall be secured. The figures thus secured shall be averaged.

(2) If the motor vehicle is listed in at least two guide sources approved by the Commissioner, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph (1)(i) and (ii). If the actual cost method is used, and the owner of the damaged vehicle shows that the replacement vehicle is not of the same kind and quality, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

(3) If the motor vehicle is not listed in at least two of the sources authorized by paragraph (1)(i), or if the vehicle differs materially from the average vehicle because of factors not considered in the guide sources, for example, antique or classic cars, vehicles no longer manufactured and unique vehicles, the replacement value shall be calculated by the actual cost method or by the dealer quotation method, as described in paragraph (1)(ii) and (iii). If the dealer quotation method is used, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

(4) Applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value.

(5) The licensed appraiser's total loss evaluation report shall contain the names and addresses of those persons from whom quotations were secured, the date secured, and whether or not a similar vehicle was available.

(6) The licensed appraiser's file shall show the method used to determine the replacement value in a given locality.

(7) The appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within 5 working days to the consumer by the appraiser after the appraisal is completed. If a settlement offer is extended before the consumer receives the total loss evaluation report, the consumer shall be advised of the total loss evaluation report's contents and of the consumer's right to be sent a copy within 5 days after its completion.

(f) In addition to the requirements in section 11 of the act (63 P. S. § 861), an appraiser

(1) May not have a conflict of interest in the making of an appraisal. This chapter and the act, and this section in particular, shall be strictly interpreted to protect the interest of the consumer and place the burden upon the appraiser to eliminate any conflict of interest in the making of an appraisal.

(2) Shall obtain the consumer's consent before authorizing the removal of a motor vehicle from one location to another.

(i) The consent of the consumer is not necessary for initial removal of the motor vehicle from the scene of an accident.

(ii) An appraiser authorizing removal of a motor vehicle by a vehicle salvage dealer shall inform the vehicle salvage dealer in writing that possession is merely for safe-keeping purposes and that the vehicle salvage dealer does not have any ownership rights to the motor vehicle, its parts or accessories, until a certificate of title or certificate of salvage is received indicating that ownership has been transferred.

(3) Shall review the appraisal with an authorized representative of the repair shop which is selected by the consumer or with any other person reasonably necessary to demonstrate that the actual costs of repairs are adequately covered in the appraisal.

(4) May not mention the name of any repair shop, unless the appraiser includes disclosure that there is no requirement to use any specified repair shop.

(g) There are no provisions of the act or this chapter which shall be construed as intended in any way to prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if desired by any of the involved parties.

(h) The penalties for violating provisions of the act and this chapter are set forth in sections 5, 6 and 9 of the act (63 P. S. §§ 855, 856 and 859).

§ 62.4. (Reserved).

[Pa.B. Doc. No. 99-1793. Filed for public inspection October 22, 1999, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CHS. 445 AND 491]

Administrative Practice and Procedure; Outdoor Advertising

The Department of Transportation (Department), Office of Chief Counsel, under the authority contained in 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Law) proposes to amend Chapters 445 and 491 (relating to outdoor advertising devices; and administrative practice and procedure), to read as set forth in Annex A.

Purpose of Chapter 491

The purpose of Chapter 491 is to supplement 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (General Rules). In accordance with 1 Pa. Code § 31.1(c) (relating to scope), Chapter 491 supersedes any inconsistent provisions in the General Rules in proceedings before the Department.

Purpose of the Proposed Amendments

The purpose of the proposed amendments is to provide a more comprehensive version of the rules regarding administrative proceedings before the Department's hearing officers. These rules spell out the particular requirements for a request for an administrative hearing and address the concerns of those seeking redress under the Department's authority. These proposed amendments will establish standards which will facilitate administrative review of the decisions of Department subordinates on matters involving, but not limited to, suspension or revocation of permit privileges; computation of credit for time served under suspension or revocation of the driving privileges; and denial of applications for permits related to driveways, placement of billboards on the right of way and heavy hauling. These proposed amendments also establish, as a consequence of a burgeoning docket, an additional Department hearing officer. The docket will now be divided between two hearing officers with separate docket clerks. One hearing officer will be situated at the Riverfront Office Center and will be responsible for appeals from the Department's denial or recall of an occupational license; appeals from the Department's denial, cancellation or recall of a probationary license; requests for record reviews under 75 Pa.C.S. § 1516 (relating to department records); and requests for credit toward serving driving privilege or vehicle suspension. The other hearing officer will be located at Forum Place and will review all other matters, including but not limited to driveway permits, school bus/hazardous walking routes, overweight or oversize truck hauling permits, outdoor advertising devices, prequalification of bidder suspension or debarment, public or private airport permits and petition to intervene.

From time to time, questions have arisen concerning the sufficiency of the general rules in matters before the Department's administrative hearing officer. The broad focus of the General Rules represents an effort to promulgate regulations that would address the general practice and procedural regulations of various administrative tribunals. What they do not and cannot do is address the particularized requirements attendant with an individual

agency's attempt to implement and interpret the statutory and regulatory authority imposed upon it, and to do so in an efficient, effective and just manner. The potential inability of the General Rules to provide sufficient practice and procedural guidance throughout the entire range of issues addressed by the numerous administrative tribunals within this Commonwealth is evidenced by the promulgation of 1 Pa. Code § 31.1(c) (relating to scope of part), which enables agency-promulgated regulations to supersede inconsistent regulations contained in the General Rules.

Among the issues where the Department has found the General Rules and the Department's existing regulations to be lacking in substantive and procedural guidance, are concerns regarding the specific role of the Department hearing officer at various stages of the review; the specific procedures for requesting and instituting a Departmental hearing; procedures governing intervening parties, continuances, depositions and requests for a stay or supersedeas.

These proposed amendments represent an attempt to remedy those deficiencies and to equip properly the Department's administrative hearing officers with the necessary tools to exercise their increasing role as a means of initial Department review. This proposal is the culmination of a substantial effort to draft clear, precise and effective provisions that will facilitate the expeditious and just resolution of matters brought before the administrative docket.

The following represents a summary of the significant amendments contained in this proposed rulemaking:

Section 491.2 (relating to definitions), has been amended by inclusion of a definition for the term "office of the agency." The General Rules provide, at 1 Pa. Code § 31.11 (relating to timely filing required), that the date of receipt at the office of the agency, rather than the date of deposit in the mail, is the determinative date for filing purposes. For this reason, and because the Department will have two separate dockets, the Administrative Docket Clerk and the Driver Licensing Docket Clerk have been designated as the office of the agency upon which all commencements of action is served upon the Secretary of Transportation. Determination of filing with the appropriate docket clerk is predicated upon the nature of the action filed, delineated in § 491.4(d) (relating to institution of proceedings).

Section 491.2a (relating to separation of adjudicatory function from representation of the Department) has been added. The new section reflects the Department's respect for the constitutional right to due process which requires that the function of representing the Department in an administrative hearing be separated from the role of the adjudicator. Pennsylvania law requires that any commingling of adjudicatory and prosecutorial functions, which creates the appearance of bias and when there are no procedural safeguards implemented to ensure a fair and impartial hearing process, is a violation of procedural due process, without a showing of actual prejudice. See *Marchionni v. Southeastern Pennsylvania Transportation Authority*, 1998 Pa. Cmwlth. LEXIS 638, Decided August 3, 1998 and *Lyness v. State Board of Medical Examiners*, 529 Pa. 535, 605 A.2d 1204 (1992).

For this reason, it has been the Department's consistent practice to erect a wall between those Department employees and attorneys who are involved in administra-

tive proceedings on the one hand, and the Secretary and the Chief Counsel on the other hand. The addition of § 491.2a is to reemphasize the Department's position and the law.

Section 491.3 (relating to request for a hearing) has been amended by more fully delineating what an appellant or petitioner shall provide in the request. Additionally, in subsection (b), the Department has clearly stated its rules for timely filing of a request for a hearing. For requests for credit toward serving a driving privilege or vehicle registration suspension, every request shall be filed consistent with whichever occurs first: either 30 days after the mailing date of the Department letter denying credit or 30 days after the person requesting credit knew or should have known that the person was not receiving credit. The Department believes that by clearly and concisely stating its rules on these matters, the rules are friendly and more readily make it easier for affected persons to make determinations regarding appeals from Department action.

Section 491.4 (relating to institution of proceedings) has been amended to establish two separate docket clerks and consequently two filing addresses. For appeals from denial or recall of an occupational limited license or denial, recall or cancellation of a probationary license, requests for record review under 75 Pa.C.S. § 1516, and hearing to request credit towards a suspension, the pleadings, brief and other papers shall be filed with the Driver Licensing Docket Clerk, 1101 South Front Street—3rd Floor, Harrisburg, PA 17104-2516. For all other matters, including driveway permits, school bus/hazardous walking permits, oversize and overweight truck hauling permits, outdoor advertising sign permits, prequalification suspensions or debarment, public or private airport permits and personnel salary claims, the pleadings, briefs and other papers shall be filed with the Administrative Docket Clerk, c/o Office of Chief Counsel, 555 Walnut Street—9th Floor Forum Place, Harrisburg, PA 17101-1900.

For any given month, the Department entertains roughly over 260 cases. Of these cases, approximately 175 concern requests for credit towards serving a driving privilege or vehicle registration suspension. By dividing the administrative docket, the Department provides the forum for its driver licensing docket hearing officer to more readily dispose of the relatively simple but greater volume credit cases as well as other related traffic safety matters. More complex issues will be handled by the hearing officer situated at the Forum Place.

Section 491.6 (relating to notice and conduct of hearing), has been amended by providing substantive and procedural guidance lacking in the General Rules as they relate to an administrative practice before the Department in matters of intervention, continuances, depositions, requests for a stay or supersedeas and dispositive motions.

Under the amended rules, a request for a continuance will be considered if the same is received in writing 10 days prior to the date of the hearing. The Department's rules now make it clear that continuances will only be granted for compelling reasons, at the discretion of the hearing officer.

The amended rules also provide for the taking of testimony of a witness by deposition upon application. The granting of an application for deposition shall be entirely discretionary with the hearing officer and will only be granted for substantial and compelling reason.

The proposed amendments also spell out the conditions for grant of a stay or supersedeas. The request shall be in

writing and demonstrate to the satisfaction of the hearing officer: (1) the likelihood of success in the matter before the hearing officer; (2) immediate and irreparable from failure to grant the stay or supersedeas; (3) issuance will not substantially harm other parties to the proceedings; (4) no other remedy is available; and (5) reasonable notice has been given to all parties.

These proposed amendments are designed to eliminate dilatory action on the part of some attorneys and to facilitate swift resolution of the matter before the hearing officer without sacrificing fairness or fair play.

Section 445.9 (relating to erection, maintenance and repair of signs) has been amended by indicating that a request for hearing, after a person has been notified by the Department of the revocation or denial of a permit, shall be made within 30 days of the date of the notice revoking or denying the permit. The existing rule provides that the request shall be made within 20 days of the revocation or denial of the permit. This proposed change was made because the request for a hearing will not be submitted to the Chief, Right of Way Division, as the existing rule provides, but rather directly to the office of the hearing officer. Accordingly, the request for a hearing shall be consistent with § 491.4(b).

Persons and Entities Affected

These proposed amendments affect all Department officials involved in the administrative hearing process and those persons who have occasion to request administrative review of Department determinations.

Fiscal Impact

These proposed amendments will not impose increased costs on private persons, State or local governments. These proposed amendments will not occasion the development of additional reports or other paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 1999, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Transportation. In addition to submitting these proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

Sunset Date

The Department is not establishing a sunset date for these proposed amendments since these amendments are needed to administer provisions required under 2 Pa.C.S. (relating to administrative law and procedure). The Department will, however, continue to monitor closely these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit, within 30 days of publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions or objections regarding the proposed amendments to Robert H. Raymond, Jr., Deputy Chief Counsel, Office of Chief Counsel, 555 Walnut Street, 9th Floor Forum Place, Harrisburg, PA 17120.

Contact Person

The contact person is Jerry McCoy, Assistant Counsel-In-Charge, Regulations, Office of Chief Counsel, 555 Walnut Street, 9th Floor Forum Place, Harrisburg, PA 17120, (717) 787-5299.

BRADLEY L. MALLORY,
Secretary

Fiscal Note: 18-349. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 67. TRANSPORTATION****PART I. DEPARTMENT OF TRANSPORTATION****Subpart B. NONVEHICLE CODE PROVISIONS****ARTICLE III. HIGHWAYS****CHAPTER 445. OUTDOOR ADVERTISING DEVICES****§ 445.9. Erection, maintenance and repair of signs.**

* * * * *

(f) *Hearing.* A person notified of the revocation or denial of a permit under this section shall be granted a [**Departmental**] hearing by the [**Chief, Division of Right-of-Way, or his representative,**] Department hearing officer if a request is made within [**20**] 30 days of the date of the notice revoking or denying the permit. A request for a hearing shall operate to stay the revocation of a permit pending disposition of the hearing.

ARTICLE V. GENERAL PROCEDURES**CHAPTER 491. ADMINISTRATIVE PRACTICE AND PROCEDURE****§ 491.1. Applicability of [general rules] General Rules.**

This chapter [**is intended to supplement and supersede**] supplements and supersedes inconsistent provisions in [**1 Pa. Code Part II (relating to)**] the [**general rules of administrative practice and procedure**] General Rules.

* * * * *

§ 491.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

General [rules of administrative practice and procedure] Rules—The rules found [**at**] in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

Office of the agency—The Office of the Administrative Docket Clerk, or the Driver Licensing

Docket Clerk, upon which commencement of process is made upon the Secretary.

* * * * *

§ 491.2a. Separation of adjudicatory function from representation of the Department.

(a) *Separation of adjudicatory function.* The adjudicatory function performed in accordance with this chapter and the General Rules will be separated from the function of representing the Department in administrative hearing matters. This chapter prescribes that an administrative hearing officer will preside over any hearing and, if exceptions are filed by any party, the decision ultimately is made by the Secretary. The Department's Chief Counsel advises the Secretary in his adjudicatory capacity.

(b) *Ex parte discussions.* Under no circumstances may any Department attorney representing the Department in an administrative hearing matter, or any Department employee involved in such a matter, discuss the case ex parte with the administrative hearing officer, the Chief Counsel or the Secretary.

(c) *Prohibited discussions with employees.* Likewise, the administrative hearing officer, the Chief Counsel and the Secretary will not discuss with, or exercise any supervisory responsibility over, any employee with respect to an administrative hearing matter with which that employee is involved.

(d) *Designation by Chief Counsel and Secretary.* If it becomes necessary for the Chief Counsel or the Secretary to become involved on behalf of the Department in any administrative hearing matter, they are prohibited from participating in the adjudication of the case and should designate appropriate individuals to exercise their functions.

§ 491.3. Request for hearing.

(a) *Content.* [A written request for a hearing shall contain a clear, concise statement of the facts, including the essential elements of the case and the relief requested.] A request for a hearing shall be made in writing and shall contain:

(1) A clear and concise statement of the facts of the case, including all essential elements of the claim.

(2) A clear and specific list of the legal issues upon which the appeal is based and the desired remedy.

(3) A copy of the denial or revocation letter, permit, statutory or regulatory provision or other document which gives rise for the occasion of the appeal.

(b) Timeliness of petition for hearing.

(1) *General rule.* Except as otherwise provided in paragraph (2) or by statute or regulation, every request for a hearing shall be filed within 30 days of the Department's determination which gives rise to the appeal.

(2) *Request for credit toward serving driving privilege or vehicle registration suspensions.* Every request for a hearing to request credit toward serving a driving privilege or vehicle registration

suspension shall be filed consistent with whichever of the following events occurs first:

(i) Thirty days after the mailing date of the Department's letter denying credit.

(ii) Thirty days after the date the person requesting the hearing knew or should have known that the person was not receiving credit.

[(b)] (c) *Determination of insufficiency.* The Department hearing officer may determine that a request for a hearing is insufficient or improper under [1 Pa. Code Part II (relating to) the [general rules of administrative practice and procedure)] General Rules or this chapter, and may direct the [administrative] docket clerk to mark the matter closed and to return the request, with notice of the deficiency, to the initiating party [with notice of the deficiency].

(d) *Department's request for clarification of the issues.* The Department may request that the Department hearing officer order that the opposing counsel or party more specifically articulate the issues giving rise to the cause for the appeal.

[(c)] (e) * * *

§ 491.4. Institution of proceedings.

(a) *Approval and docketing.* Upon approval, under § 491.3(b) (relating to request for a hearing), of a written request for a hearing, or upon receipt of a written request from the Department for an order to show cause under § 491.9 (relating to order to show cause), the [administrative] docket clerk will assign the matter a caption, including [an administrative] a docket number, and will enter the matter [onto] into the [administrative] docket.

* * * * *

(c) *Docket clerks designated office of the agency/timely filings.* For purposes of activities and proceedings before the Department in matters under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the administrative agency law) which are not vested in other bodies of law, the Administrative Docket Clerk and the Driver Licensing Docket Clerk are designated as the office of the agency. As the office of the agency, all correspondence, pleadings, briefs, orders and other papers relating to the case shall be filed with the Administrative Docket Clerk or the Driver Licensing Docket Clerk. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative for timely filing purposes.

(d) *Address for filing.* Correspondence, pleadings, briefs, orders or other papers relating to the case shall be filed with the [administrative] appropriate docket clerk at the following address:

(1) Secretary of Transportation, Driver Licensing Docket Clerk, 1101 South Front Street, 3rd Floor, Harrisburg, Pennsylvania 17104-2516 for matters involving:

(i) Appeals from the Department's denial or recall of an occupational limited license.

(ii) Appeals from the Department's cancellation, denial or recall of a probationary license.

(iii) Requests for record review under 75 Pa.C.S. § 1516 (relating to department records).

(iv) Hearings to request credit toward serving driving privilege or vehicle registration suspensions.

(2) Secretary of Transportation, Administrative Docket Clerk, c/o Office of Chief Counsel, [Room 521, Transportation and Safety Building,] 555 Walnut Street—9th Floor, Harrisburg, Pennsylvania [17120] 17101-1900 for all matters not specified in paragraph (1), including the following:

(i) Minimum use driveway permits.

(ii) Low, medium and high volume driveway permits.

(iii) School bus/hazardous walking routes.

(iv) Overweight or oversize truck hauling permits.

(v) Private airport permits.

(vi) Public airport permits.

(vii) Outdoor advertising sign permits.

(viii) Prequalification suspension or debarment.

(ix) Personnel salary claims.

(x) Municipal reimbursements.

(xi) Appeals from the Department's refusal to issue a certificate of title for reasons other than failure to pay a required fee or tax in connection with or resulting from the acquisition or use of a vehicle.

(xii) Miscellaneous matters, including petitions to intervene.

[(d)] (e) * * *

§ 491.5. Filing fee.

(a) *Fee required with request for a hearing.* A filing fee shall accompany a written request for a hearing in all matters except those involving the suspension or revocation of a permit, license, certificate or privilege by the Department, wherein a filing fee is not required.

(1) The schedule of filing fees will be reviewed [and revised annually by the Department as necessitated by the increasing costs of adjudication] and revised periodically by the Department and will be published in the *Pennsylvania Bulletin*.

* * * * *

(3) Information regarding filing fees may be obtained from the [administrative] appropriate docket clerk at the [address] addresses provided in § 491.4 [(c)] (d) (relating to institution of proceedings).

* * * * *

(c) *Fee not received with filing.* If a written request for a hearing is received without the required filing fee, the [administrative] docket clerk will immediately provide the requesting party with written notice that the fee shall be forwarded and received by the [administrative] docket clerk within 20 days of the mailing date of the notice.

(d) *Request not docketed for failure to remit filing fee.* If the Department does not receive the required filing fee

within 20 days after the mailing date of the notice to the requesting party, [**and the filing fee is not waived,**] the [**administrative**] docket clerk may refuse to allow the matter to be docketed, may determine the matter to be closed and may return the written request to the requesting party.

* * * * *

§ 491.6. Notice and conduct of hearing.

(a) *Written notification to [**interested**] parties.* Upon docketing a written request for a hearing, the [**administrative**] docket clerk will provide written notification to all [**interested**] parties [**and other participants**] of the request for a hearing and of referral of the matter to the Department hearing officer for scheduling.

(b) *Scheduling.* The Department hearing officer will schedule a hearing for the docketed request and will direct the [**administrative**] docket clerk to issue written notice of the time and place of the scheduled hearing to all [**interested**] parties and other participants.

(c) *Authority of Department hearing officer.* [**After referral of the matter, the**] The Department hearing officer will have the authority to decide all motions, petitions, requests for supersedeas, discovery requests or other matters presented by the parties to [**the**] this action or other participants and to proceed in accordance with 1 Pa. Code Chapter 35 Subchapter E (relating to presiding officers).

(d) *Intervention.*

(1) *Petition to intervene.* A person who seeks to intervene as a party in a proceeding shall file a petition for leave to intervene with the Office of Administrative Docket Clerk. The petition shall contain a concise statement of the interest of the moving party and the grounds for intervention.

(2) *Refusal.*

(i) *Delay.* A petition for intervention may be refused if the moving party has unduly delayed in applying for intervention or the intervention will unduly delay or prejudice the hearing or the adjudication of the rights of the parties.

(ii) *Supersedeas.* This subsection supplements 1 Pa. Code §§ 35.27—35.36.

(e) *Continuances.*

(1) A request for a continuance will be considered if the docket clerk is notified in writing of the grounds at least 10 days prior to the date of the hearing. Continuances will be granted only for substantial or compelling reasons, at the discretion of the Department hearing officer.

(2) A request for continuance made less than 10 days prior to the date of the hearing will not be considered unless the Department hearing officer is satisfied that circumstances relating to the requested continuance occurred within 10 calendar days of the hearing date.

(3) The requesting party shall seek the agreement of the other parties to the proceeding prior to requesting the continuance. The position of the opposing parties shall specifically be noted in the continuance request. The hearing officer may

refuse a request for continuance in spite of the concurrence of all parties.

(f) *Depositions.* The testimony of a witness may be taken by deposition only upon application by a party in a proceeding before the Department. The granting of an application for depositions will be entirely discretionary with the Department hearing officer and will only be granted for substantial and compelling reasons.

(g) *Request for a stay or supersedeas.*

(1) *Conditions for grant.* The Department hearing officer, upon written motion of a party, may grant a request for a stay or supersedeas, if the requesting party can demonstrate the following to the satisfaction of the Department hearing officer:

(i) A likelihood of success on the merits of the matter before the Department hearing officer.

(ii) Immediate and irreparable harm will result from the failure to grant the stay or supersedeas.

(iii) Issuance of the stay or supersedeas will not substantially harm other parties to the proceedings.

(iv) No other remedy is available.

(v) The moving party has given reasonable notice of the request to all parties.

(2) *Requirement to provide security.* The hearing officer may require a non-Commonwealth party submitting a request for a stay or supersedeas to provide a bond or other appropriate security, as determined by the Department hearing officer, for the satisfaction of the order if it is affirmed or if for any reason the appeal is dismissed, or for the satisfaction of any modification of the order and in either case costs, interest and damages for delay that may finally be awarded.

(3) *Memorandum in opposition.* Any party to a proceeding may file with the Office of Administrative Docket Clerk a memorandum in opposition to a request for a stay or supersedeas within 10 days of the filing of the request.

(h) *Dispositive motions.*

(1) *Dismissal.* The Department hearing officer, on motion of a party, may dismiss the action in whole or in part:

(i) Whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense.

(ii) For failure to preserve the right to an appeal by a timely filing.

(iii) For mootness.

(iv) For any other reason appearing in the record.

(2) *Supersession.* This section supersedes 1 Pa. Code § 35.180 (relating to action on motions).

(i) *Appeal to the Secretary of a hearing officer order.* Unless otherwise provided by this chapter, an appeal from an order rendered by the hearing officer shall be filed with the appropriate docket clerk within 30 days of the date the order is entered.

[(d)] (j) * * *

§ 491.7. Filing requirements

(a) *Number of copies.* The original and two conformed copies of briefs, pleadings or other documents relating to the case, subsequent to the written request for a hearing, together with a certificate of service showing service to all other parties and participants, as required in § 491.8 (relating to service), shall be filed with the **[administrative]** docket clerk who will date stamp them upon receipt and provide copies to the Department hearing officer.

(b) *Telefacsimile and electronic transmission not accepted.* A request for a hearing, subsequent correspondence, briefs, pleadings or other documents relating to the case will not be accepted for filing if received **electronically or** by telefacsimile.

* * * * *

§ 491.9. Order to show cause.

(a) *Initial request.* When the Department **[initiates]** files a written request for an order to show cause, that request shall be accompanied by a copy of the proposed order to show cause for the signature of the Department hearing officer.

(b) *Notification to respondent.* Upon the **[signature by the Department hearing officer of an order to show cause]** issuance of an order to show cause by the Department hearing officer, the **[administrative]** docket clerk will forward a copy of the order to the respondent **[and all interested parties]**, directing the respondent to show cause why the subject action should not be taken by the Department.

* * * * *

(d) *Answer.* The order to show cause shall include a notice to the respondent to answer, in writing, within **[20] 30** days of the date the notice was mailed. A respondent who fails to file an answer within **[20] 30** days of the mailing date of the notice shall be deemed to have waived objection to the Department's proposed action.

(e) *Notification to [interested] parties [and other participants].* Upon timely filing of an answer to an order to show cause, the **[administrative]** docket clerk will notify all **[interested]** parties **[and other participants]** of referral of the matter to the Department hearing officer for the scheduling of a hearing.

(1) Timely filing of an answer to the order to show cause will not operate as an automatic **stay or** supersedeas of action taken by the Department prior or subsequent to the receipt of the order to show cause.

(2) Persons initiating a formal request for **stay or** supersedeas shall direct their application to the Department hearing officer.

(f) *Scheduling of hearing.* The Department hearing officer will schedule a hearing and will direct the **[administrative]** docket clerk to issue notice to all **[interested]** parties and other participants of the time and place of the hearing.

(g) **[Authority of Department hearing officer.** The Department hearing officer will preside at the hearing or scheduled prehearing conference and will

rule on questions regarding the admissibility of evidence or other matters relating to the conduct of the hearing.

(h) *Waiver.* Upon the failure of the respondent to file a timely answer to the order to show cause, the Department hearing officer may direct the **[administrative]** docket clerk to send to all parties **[and other participants]** a notice that objections to the order to show cause are deemed irrevocably waived and the proposed action of the Department deemed approved.

[(i)] (h) * * *

§ 491.10. Hearings.

(a) *Recording.* Upon the scheduling of a hearing, the **[administrative]** docket clerk will arrange for a stenographer to record the testimony presented at the hearing. **[The administrative docket clerk will notify the stenographer of continuances, withdrawals and rescheduling.]**

(b) *Presentation of evidence.* The party with the burden of proof in a proceeding will proceed first with the presentation of evidence at a hearing.

(1) In matters involving the suspension or revocation of an existing permit, license or privilege by the Department, **or the debarment of a contractor**, the Department will proceed first with the presentation of evidence at the hearing.

(2) In matters involving the denial of an application for a permit, license, certificate, **prequalification**, privilege, credit toward suspension or other requested action by the Department, the permit or license applicant shall proceed first with the presentation of evidence at the hearing.

* * * * *

(d) *Findings of fact and conclusions of law.* At the close of the hearing, the parties or other participants **[will]** may, at the discretion of the Department hearing officer, be required or given an opportunity to file **[Recommended Findings of Fact and Conclusions of Law]** recommended findings of fact and conclusions of law, together with a brief or memorandum discussing the applicable law and relevant facts of record. **[The Department hearing officer may also request the parties or other participants to file the same.]**

(e) *Filing of hearing transcript.* Upon the filing of the transcript of the hearing, the **[administrative]** docket clerk shall mail notice of the date the transcript was filed to the parties.

* * * * *

§ 491.11. Proposed report.

(a) *General.* Following the hearing **and the timely submission of any posthearing filings**, the Department hearing officer will prepare and file a proposed report with the **[administrative]** docket clerk.

(b) *Contents.* The proposed report shall contain:

* * * * *

(4) An **[administrative]** order.

(c) *Notification.* The **[administrative]** docket clerk will forward copies of the proposed report to all parties **[or participants]** of record.

* * * * *

§ 491.12. Exceptions.

(a) *Filing.* A party [**or other participant**] desiring to appeal to the Secretary may file exceptions to the proposed report within 30 days after the mailing date of the proposed report by the [**administrative**] docket clerk.

(b) *Reply.* A party [**or other participant**] may file a reply to the exceptions filed by another party [**or other participant**] within [**10**] 20 days of the filing date of exceptions filed by another party [**or participant**].

(c) *Record.* When timely exceptions are filed, the [**Department hearing officer**] docket clerk will forward the following to the Secretary:

* * * *

(d) *Waiver.* If no party [**or other participant**] files exceptions to the proposed report within the time prescribed in subsection (a), those persons shall be deemed to have irrevocably waived objections to the proposed report, and the proposed report will be deemed approved by the Secretary.

* * * *

§ 491.13. Transmittal of certified record upon appeal.

If a final order of the Secretary is appealed to Commonwealth Court under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies), the [**Department hearing officer, together with the administrative**] docket clerk[,] will prepare and forward the certified record to the clerk of Commonwealth Court.

[Pa.B. Doc. No. 99-1794. Filed for public inspection October 22, 1999, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 117]

Boat Rental Business; Extension of Public Comment Period

On May 22, 1999, the Fish and Boat Commission (Commission) published a notice of proposed rulemaking (Regulation No. 48A-90) at 29 Pa.B. 2678 (May 22, 1999), seeking public comments, objections or suggestions on a proposal relating to boat rental businesses or liveries. The Commission is extending the public comment period for the proposed amendments until November 30, 1999.

Interested persons are invited to submit written comments, objections or suggestions about the proposal to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, on or before November 30, 1999. Comments submitted by facsimile will not be accepted. Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each electronic mail transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender

within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

[Pa.B. Doc. No. 99-1795. Filed for public inspection October 22, 1999, 9:00 a.m.]

STATE BOARD OF BARBER EXAMINERS

[49 PA. CODE CH. 3]

Fees

The State Board of Barber Examiners (Board) proposes to amend § 3.103 (relating to fees) by revising certain application fees to read as set forth in Annex A.

A. Effective Date

The proposed amendment will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

B. Statutory Authority

The proposed amendment is authorized under section 14 of the Barbers' License Law (63 P. S. § 564).

C. Background and Purpose

The Barbers' License Law requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from general operating revenues and are funded through fees in which the cost of providing the service forms the basis for the fee.

In a recent systems audit of the operations of the Board within the Bureau of Professional and Occupational Affairs, the fees for services to licensees and applicants were analyzed to determine if the fees reflected the actual cost of providing the services. Actual cost calculations are based upon the following formula:

$$\begin{array}{l} \text{number of minutes to perform the function} \\ \times \\ \text{pay rate for the classification of personnel} \\ \text{performing the function} \\ + \\ \text{a proportionate share of administrative overhead.} \end{array}$$

The analysis determined that certain fees were insufficient to capture the actual cost of providing the service whereas certain other fees were more than sufficient to capture the cost of providing the service. For example, the proposed fee for an application for licensure as a barber, barber manager or barber teacher would be reduced from \$20 to \$10 which is the actual cost of processing this application.

In this proposal, fees for the services identified would be adjusted to allocate costs to those who use the service or application. The Board would continue to apportion the enforcement and operating costs to the general licensing population when the Board makes its biennial reconciliation of revenue and expenditures.

D. Compliance with Executive Order 1996-1

In accordance with of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the proposed amendment the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants.

E. Fiscal Impact and Paperwork Requirements

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The proposed amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

F. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 1999, the Board submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed amendment, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendment, by the Board, the General Assembly and the Governor, of objections raised.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to Sara Sulpizio, Administrative Assistant, State Board of Barber Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-422 (Application Fees), when submitting comments.

RICHARD SCIORILLO,
Chairperson

Fiscal Note: 16A-422. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS****PART I. DEPARTMENT OF STATE****Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS****CHAPTER 3. STATE BOARD OF BARBER EXAMINERS****SCHOOLS OF BARBERING****§ 3.103. Fees.**

The schedule of fees charged by the Board is as follows:

	* * * * *
Licensure of barber, barber shop manager or barber teacher	\$ [20] 10
Licensure of barber by reciprocity	\$ [15] 20
Licensure of barber shop	\$ [35] 55
Licensure of barber school	\$ [100] 280
	* * * * *
Change in barber shop—inspection required	\$ [35] 55
	* * * * *
Reinspection after first fail-new or change (shop or school)	\$40
[Certification of licensure] Verify license/permit/registration	\$15
Certification of exam scores	\$25

[Pa.B. Doc. No. 99-1796. Filed for public inspection October 22, 1999, 9:00 a.m.]

NOTICES

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

The Delaware River Basin Commission (Commission) will hold an informal conference followed by a public hearing on Wednesday, October 27, 1999. The hearing will be part of the Commission's regular business meeting. Both the conference and business meeting are open to the public and will be held in Courtroom No. 1 of the Carbon County Courthouse, at 4 Broadway, Jim Thorpe, PA.

The conference among the Commissioners and staff will begin at 9:30 a.m. and will include reports on the following subjects: hydrologic conditions in the basin; activities of the Flow Management Technical Advisory Committee; status of the Proposed Determination Regarding the Assimilative Capacity of the Tidal Delaware River for Volatile Organics and Chronic Toxicity; and status of discussions with the Army Corps of Engineers regarding an agreement for storage of water at Francis E. Walter Reservoir and the matter of Federal funding for the Commission. In addition, a presentation will be made on the stream restoration program of the Waterway Corridors Subcommittee of the Commission's Water Quality Advisory Committee.

The 1:30 p.m. business meeting will include a public hearing on the projects summarized as follows. In addition, the Commission will address the following: minutes of the September 30, 1999 business meeting; announcements; report on hydrologic conditions in the basin; reports of the Executive Director and General Counsel; a Resolution Establishing a Watershed Advisory Council; and public dialogue.

The subjects of the hearing will be as follows:

1. *Borough of Brooklawn Water Department D-85-18 CP Renewal* 2. An application for the renewal of a ground water withdrawal project to supply up to 15 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1, 3 and 4. Commission approval on December 8, 1989 was extended to 10 years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 15 mg/30 days. The project is located in Brooklawn Borough, Camden County, NJ.

2. *Moon Nurseries, Inc. D-88-28 Renewal*. An application for the renewal of a ground water withdrawal project to supply up to 8 mg/30 days of water to the applicant's nursery irrigation system from Well No. 1. Commission approval on April 26, 1989 was extended to 10 years. The applicant requests that total withdrawal from the well remain limited to 8 mg/30 days. The project is located in Lower Makefield Township, Bucks County, PA.

3. *Pennsauken Township D-98-36 CP*. A project to withdraw up to 20 mg/30 days of water from the tidal reach of the South Branch Pennsauken Creek, for irrigation of the Pennsauken Country Club golf course. The proposed withdrawal will replace the existing municipal potable water supply system as the source of irrigation water. The project golf course is located just northeast of the intersection of Haddonfield Road and Moorestown Pike in Pennsauken Township, Camden County, NJ. The intake

will be situated at the eastern side of the golf course on the west bank of South Branch Pennsauken Creek.

4. *Citizens Utilities Water Company of Pennsylvania D-98-43 CP*. An application for approval of a ground water withdrawal project to supply up to 28 mg/30 days of water to the applicant's Penn Water District distribution system from new Well No. 27, and to retain the existing withdrawal limit of 127 mg/30 days from all wells. The project is located in South Heidelberg Township, Berks County, PA.

5. *Northeast Schuylkill Joint Municipal Authority D-99-33 CP*. An application to construct a new 0.245 million gallons per day (mgd) sewage treatment plant (STP) to serve portions of Rush and Ryan Townships, Schuylkill County, PA. The proposed extended aeration/activated sludge STP will be situated just east of Barnesville at the northeast corner of State Route 54 and Holly Road (Township Road 856) in Rush Township, Schuylkill County, PA, and will discharge to Pine Creek, a tributary of the Little Schuylkill River.

6. *Allen Family Foods, Inc. D-99-49*. An application to rerate the applicant's existing 0.91 mgd wastewater treatment plant to an average monthly flow of 1.25 mgd. The plant will continue to provide secondary treatment only to the applicant's poultry processing facility, which is located on the west side of Route 5 approximately 1,400 feet south of Route 18 in the Village of Harbeson, Sussex County, DE. Treated plant effluent will continue to discharge to Beaverdam Creek, a tributary of Broadkill River.

7. *Warwick Township Water & Sewer Authority D-99-51 CP*. A project to expand the applicant's existing 0.12 mgd Country Crossing STP to provide advanced secondary treatment of 0.32 mgd. The STP is located just north of the intersection of Bristol and Mearns Roads in Warwick Township, Bucks County, PA and will continue to serve Warwick Township. Although the applicant will maintain its outfall to an unnamed tributary of Little Neshaminy Creek, the effluent will be conveyed to Heritage Creek Golf Course pond for irrigation purposes, as needed.

8. *Toll Brothers, Inc. D-99-52*. An application for approval of a surface water withdrawal project to supply up to 19.5 mg/30 days of water from Ponds A and G to irrigate the applicant's Laurel Creek Country Club golf course. The project is located in Moorestown Township, Burlington County, NJ.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883-9500, Ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883-9500, Ext. 203 prior to the hearing.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Secretary, Pamela M. Bush, at (609) 883-9500, Ext. 222 or the New Jersey Relay Service at (800) 852-7899 (TTY) to discuss how the Commission may accommodate their needs.

PAMELA M. BUSH,
Secretary

[Pa.B. Doc. No. 99-1797. Filed for public inspection October 22, 1999, 9:00 a.m.]

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending October 12, 1999.

BANKING INSTITUTIONS

Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
10-8-99	NBT Bancorp, Inc., Norwich, New York, to acquire 100% of the outstanding shares of Lake Ariel Bancorp, Inc., Lake Ariel, Pennsylvania, and thereby acquire LA Bank, National Association, Lake Ariel, Pennsylvania	Norwich, New York	Filed

New Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-1-99	Northeast Pennsylvania Trust Company Hazleton Luzerne County	2 East Broad St. Hazleton Luzerne County	Commenced Operations

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-24-99	United Bank of Philadelphia Philadelphia Philadelphia County	Philadelphia	Effective
	Purchase of assets/assumption of liabilities of four branch offices of First Union National Bank, Charlotte, North Carolina, located at:		
	1620 Wadsworth Avenue Philadelphia Philadelphia County	3945-49 Chestnut Street Philadelphia Philadelphia County	
	2836 West Girard Avenue Philadelphia Philadelphia County	1501 North Broad Street Philadelphia Philadelphia County	
10-5-99	First Bank of Philadelphia, Philadelphia, and Pennsylvania Savings Bank, Philadelphia Surviving Institution—First Bank of Philadelphia, Philadelphia, with a change in corporate title to "First Penn Bank"	Philadelphia	Approved Effective 10-12-99
	<i>Branches Acquired By Merger:</i>		
	1424 Walnut Street Philadelphia Philadelphia County (Former Main Office of First Bank of Philadelphia)		

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-4-99	Lebanon Valley Farmers Bank Lebanon Lebanon County	115 West Main Street Campbelltown S. Londonderry Twp. Lebanon County	Opened

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-7-99	The Peoples Bank of Oxford Oxford Chester County	Jenners Pond Retirement Community Allison Building 2000 Greenbriar Lane Penn Township Chester County	Approved
10-7-99	Summit Bank Bethlehem Northampton County	Genuardi's Family Market 73 Old Dublin Pike Doylestown Bucks County	Approved
10-7-99	Summit Bank Bethlehem Northampton County	Genuardi's Family Market 2395 York Road Jamison Bucks County	Approved
10-7-99	The Madison Bank Blue Bell Montgomery County	Pennsylvania Business Campus 100 Gibraltar Road Horsham Montgomery County	Filed
10-8-99	Premier Bank Doylestown Bucks County	General Hancock Shopping Center Horsham and Upper State Roads Montgomeryville Montgomery County	Approved
10-8-99	Main Street Bank Reading Berks County	15 Maplewood Drive Amity Township Berks County	Approved
10-8-99	Main Street Bank Reading Berks County	100 Progress Drive Doylestown Township Bucks County	Approved
10-8-99	Northwest Savings Bank Warren Warren County	800 State Street Erie Erie County	Approved

Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-5-99	Laurel Bank Johnstown Cambria County	<i>To:</i> Route 88 & Route 188 Rices Landing Jefferson Township Greene County <i>From:</i> 36 Greene Street Jefferson Greene County	Approved
10-12-99	Harris Savings Bank Harrisburg Dauphin County	<i>To:</i> 1100 Cocoa Avenue Hershey Derry Township Dauphin County <i>From:</i> 114 West Chocolate Ave. Hershey Derry Township Dauphin County	Filed

Articles of Amendment

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-8-99	FirstService Bank Lansdale Montgomery County	To provide for the acquisition of full fiduciary powers.	Approved and Effective

SAVINGS ASSOCIATIONS**Branch Relocations**

<i>Date</i>	<i>Name of Association</i>	<i>Location</i>	<i>Action</i>
10-8-99	East Stroudsburg Savings Association Stroudsburg Monroe County	<i>To:</i> 601 Route 940 Mount Pocono Monroe County	Filed

<i>Date</i>	<i>Name of Association</i>	<i>Location</i>	<i>Action</i>
		<i>From:</i> 29 Mount Pocono Blvd. Mount Pocono Monroe County	

Voluntary Liquidations

<i>Date</i>	<i>Name of Association</i>	<i>Action</i>
10-6-99	Building Association of Landenburg, PA Landenburg Chester County	Articles of Dissolution filed with the Department of State. Corporate existence terminated.

CREDIT UNIONS

No activity.

DAVID E. ZUERN,
Secretary

[Pa.B. Doc. No. 99-1798. Filed for public inspection October 22, 1999, 9:00 a.m.]

Maximum Lawful Rate of Interest for Residential Mortgages for the Month of November 1999

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of November, 1999, is 9%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221). Further preemption was instituted with the signing of Pub. L. 96-399, which overrode State interest rate limitations on an individual who finances the sale or exchange of residential real property which the individual owns and which the individual occupies or has occupied as his principal residence.

Each month the Department of Banking is required by State law to compute and announce the ceiling rate on residential mortgages in Pennsylvania. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 6.43 to which was added 2.50 percentage points for a total of 8.93 that by law is rounded off to the nearest quarter at 9%.

DAVID E. ZUERN,
Secretary

[Pa.B. Doc. No. 99-1799. Filed for public inspection October 22, 1999, 9:00 a.m.]

DEPARTMENT OF EDUCATION**School District Performance Measures**

Under legislation that was passed by the General Assembly in June 1999, the Department of Education is authorized to implement another new incentive program that builds upon the success of the School Performance Funding (SPF) initiative and focuses squarely on the individual performance of professional employees: The School District Performance Measures (SDPM) program.

To foster the continued development and implementation of SDPM for professional employees, \$1 million is available in the 1999-2000 school year to provide funding for local SDPM initiatives. The purpose of this grant program is to provide incentives to school districts, AVTSs and intermediate units (IUs) for programs that reward individual teachers and other professional employees based on the quality of their professional performance.

One million dollars will be awarded to school districts, AVTSs and IUs proportionate to the impact of the local SDPM plan. Impact is determined by a combination of the number of professional employees affected and manner in which they are affected. Proposals will be accepted from school districts, AVTSs and IUs that have SDPM programs or intend to implement programs in the 1999-2000 school year.

Individuals can access the School District Performance Measures Request for Proposal (RFP) on the PDE website at <http://www.pde.psu.edu> under Issues and Initiatives. The RFP requires Adobe Acrobat Reader. The form portions of the document have been formatted so individuals can complete and print them while the document is open in Acrobat Reader.

Questions regarding this program should be directed to Tim Daniels in the Office of Educational Initiatives at (717) 705-2343.

EUGENE W. HICKOK,
Secretary

[Pa.B. Doc. No. 99-1800. Filed for public inspection October 22, 1999, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

(Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated the EPA, Region III, Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodations to participate in the proceeding should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.

Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

PA 0028401. Sewage, **Borough of Dravosburg**, 226 Maple Avenue, Dravosburg, PA 15034.

This application is for renewal of an NPDES permit to discharge treated sewage from the Dravosburg Borough Sewage Treatment Plant in Dravosburg Borough, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as the Monongahela River, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the PA American Water Company, Pittsburgh, on the Monongahela River.

Outfall 001: existing discharge, design flow of 0.48 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine				
(1st month—36th month)	monitor and report			
(37th month—expiration)	1.0			
pH	not less than 6.0 nor greater than 9.0			

Outfall 002, which discharges to the receiving waters known as the Monongahela River, serves as a combined sewer overflow necessitated by stormwater entering the sewer system and exceeding the hydraulic capacity of the sewers and/or

the treatment plant. This combined sewer overflow is permitted to discharge only for this reason. There are at this time no specific effluent limitations on the outfall. The discharge shall be monitored for cause, frequency, duration and quantity of flow.

The EPA waiver is in effect.

PA 0203955. Sewage, **84 Lumber Company**, P. O. Box 584, Eighty-Four, PA 15384.

This application is for renewal of an NPDES permit to discharge treated sewage from the 84 Lumber Company Sewage Treatment Plant in North Strabane Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Little Chartiers Creek, which are classified as a high quality warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Western Pennsylvania Water Company on Little Chartiers Creek.

Outfall 001: existing discharge, design flow of 0.025 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	3			6
(11-1 to 4-30)	9			18
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 6.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

PA 0101664. Sewage, **Orchard Park Plan of Lots**, R. D. 2, Box 161, Bredinsburg Road, Franklin, PA 16323.

This application is for renewal of an NPDES permit to discharge treated sewage to the Unnamed Tributary to Lower Twomile Run in Cranberry Township, **Venango County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Emlenton Water Company on the Allegheny River located at Emlenton, approximately 31 miles below point of discharge.

The proposed effluent limits for Outfall No. 001, based on a design flow of 0.018 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	20	40
TSS	20	40
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
Total Residual Chlorine	1.4	3.3
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

PA 0222976. Sewage, **Albert R. Shouey**, Rt. 26, Sigel, PA 15860.

This application is for a new NPDES permit, to discharge treated waste to Unnamed Tributary of Cathers Run in Barnett Township, **Jefferson County**. This is an existing discharge.

The receiving water is classified for the following uses: high-quality-cold water fishes, aquatic life, water supply and recreation. Downstream potable water evaluation is not necessary for TDS, NO₂-NO₃, fluoride and phenolics.

The proposed discharge limits for Outfall No. 001, based on a design flow of 400 gpd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10	20
TSS	20	40
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Residual Chlorine	1.4	3.3
pH	6.0—9.0 at all times	

The EPA waiver is not in effect.

PA 0104272. Sewage, **North East Access Area, Fish and Boat Commission**, 450 Robinson Lane, Bellefonte, PA 16823.

This application is for renewal of an NPDES permit to discharge treated sanitary sewage to an unnamed tributary to Lake Erie in North East Township, **Erie County**. This is an existing discharge.

The receiving water is classified for cold water fishery, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, there is no potable water supply considered during the evaluation until it reaches Lake Erie.

The proposed effluent limits for Outfall 001, based on an average design flow of 0.005 mgd, are:

<i>Parameter</i>	<i>Effluent Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10	20
Total Suspended Solids	10	20
NH ₃ -N		
(5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	12.0
Phosphorus as P	1.0	
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
Total Residual Chlorine	0.50	
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric mean	
(10-1 to 4-30)	2,000/100 ml as a geometric mean	
pH	6.0 to 9.0 standard units at all times	

The EPA waiver is in effect.

PA 0103811, Amendment No. 3. Industrial waste, SIC: 4953 and 4959, **Northwest Sanitary Landfill**, 1436 West Sunbury Road, West Sunbury, PA 16061.

This is for a redraft of an NPDES permit, to discharge treated industrial waste and stormwater to Findlay Run in Cherry Township, **Butler County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is Salvation Army Camp on Slippery Rock Creek located at Slippery Rock, approximately 30 miles below point of discharge.

This amends the notice contained in the February 13, 1999 *Pennsylvania Bulletin*. During the comment period, the Department decided that a modification to Special Condition C was appropriate. Special Condition C previously required the permittee to collect and submit quarterly influent samples and results of the leachate. This redraft modifies that condition to require annual effluent samples and analysis. The results must be submitted to the Department on an annual basis. This analysis is in addition to that required on Pages 2 and 2a of the permit.

PA 0221759. Sewage, **Robert L. Shuttleworth**, Jerry Road, Rasselas, PA 15870.

This application is for renewal of an NPDES permit, to discharge treated waste to Unnamed Tributary to Swamp Creek in Jones Township, **Elk County**. This is an existing discharge.

The receiving water is classified for the following uses: high-quality-cold water fishes, aquatic life, water supply and recreation. Downstream potable water evaluation for TDS, NO₂-NO₃, fluoride and phenolics is not necessary.

The proposed discharge limits for Outfall 001, based on a design flow of 400 gpd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10	20
TSS	20	40
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
Total Residual Chlorine	1.4	3.3
pH	6.0—9.0 at all times	

The EPA waiver is not in effect.

PA 0029378. Sewage. **Redbank Valley School District, Hawthorn Elementary School**, 920 Broad Street, New Bethlehem, PA 16242-1117.

This application is for renewal of an NPDES permit to discharge treated sewage to the Unnamed Tributary to Redbank Creek in Hawthorn Borough, **Clarion County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Hawthorn Area Water Authority intake on Redbank Creek located at Hawthorn Borough, approximately 0.7 miles below point of discharge.

The proposed effluent limits for Outfall No. 001, based on a design flow of 0.0067 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
TSS	30	60
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
Total Residual Chlorine	0.5	1.2
Dissolved Oxygen	minimum of 3 mg/l at all times	
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

PA 0222852. Sewage. **West Fallowfield Township WWTP**, West Fallowfield Township Supervisors, 6993 Westford Road, Hartstown, PA 16131.

This application is for a new NPDES permit to discharge treated sewage to Patton Run in West Fallowfield Township, **Crawford County**. This is a new discharge.

The receiving water is classified for the following uses: trout stocking fishery, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Greenville Municipal Authority on the Shenango River located at Greenville, approximately 13 miles below point of discharge.

The proposed effluent limits for Outfall No. 001, based on a design flow of 0.05 mgd, are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Weekly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
Ammonia-Nitrogen			
(5-1 to 10-31)	3.5		7
(11-1 to 4-30)	17		34
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	8,800/100 ml as a geometric average		
Phosphorus as P	1		2
Total Residual Chlorine	0.7		1.5
pH	within limits of 6.0 to 9.0 standard units at all times.		

The EPA waiver is in effect.

PA 0222968. Sewage. **Humane Society of Mercer County, Inc.**, P. O. Box 331, Sharpsville, PA 16150.

This application is for a new NPDES permit to discharge treated sewage to the Unnamed Tributary to Daley Run in Jefferson Township, **Mercer County**. This is a new discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Sharpsville Municipal Water Authority intake on the Shenango River located at Sharpsville, approximately 14 miles below point of discharge.

The proposed effluent limits for Outfall No. 001, based on a design flow of 0.0012 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
TSS	30	60
Ammonia-Nitrogen		
(5-1 to 10-31)	9.5	19
(11-1 to 4-30)	28	56
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	11,700/100 ml as a geometric average	
Total Residual Chlorine	1.5	3.5
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

PA 0004251. Industrial waste, SIC: 3321, **Advanced Cast Products, Inc.**, P. O. Box 417, Mill Street, Meadville, PA 16335.

This application is for renewal of an NPDES permit, to discharge noncontact cooling water and stormwater runoff to French Creek in Vernon Township, **Crawford County**. This is an existing discharge.

The receiving water is classified for the following uses: WWF, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the City of Franklin on French Creek located at Franklin, approximately 28.2 miles below point of discharge.

The proposed discharge limits for Outfall No. 002, based on a design flow of 0.16344 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow			
Oil and Grease	15		30
pH	6.0 to 9.0 at all times		

The EPA waiver is in effect.

Proposed NPDES Permit Renewal Actions for Minor Sewage Discharges

The following parties have applied to renew their current NPDES permits to allow the continued discharge of controlled wastewaters into the surface waters of this Commonwealth. The Department of Environmental Protection (Department) has made a tentative determination to renew these permits and proposes to issue them, subject to their current permit effluent limitations, and monitoring and reporting requirements, with appropriate and necessary updated requirements to reflect new or changed regulations and other requirements. The updates may include, but will not be limited to, applicable permit conditions and/or requirements addressing combined sewer overflows (CSOs), municipal sewage sludge management and total residual chlorine control (TRC). Major changes to or deviations from the terms of the existing permit will be documented and published with the final Department actions.

The EPA, Region III, Regional Administrator has waived the right to review or object to these proposed permit actions under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permits are invited to submit a statement to the Field Office indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding these applications and proposed permit actions. Comments should include the name, address and telephone number of the writer and a brief statement to inform the Field Office of the basis of the comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit action. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit renewal application and related documents, proposed effluent limitations and special conditions, comments received and other information are on the Department's file. The documents may be inspected at, or a copy requested from, the Field Office that has been indicated above the application notice.

Southeast Regional Office: Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19448, (610) 832-6130.

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA0053121	Elizabeth D. Nover 970 Almshouse Road Warrington, PA 18976-1102	Doylestown Township Bucks County	UNT to Neshaminy Creek	
PA0052191	Frank H. Duke 1085 Wood Lane West Chester	Westtown Township Chester County	Goose Creek	TRC
PA0053236	Raymond E. Woodward 2086 Strasburg Road Coatesville, PA 19320	Newlin Township Chester County	UNT to West Branch of Brandywine	TRC
PA0011231	Tosco Refining L. P. and Buckeye PipeLine Co. L. P. P. O. Box 368 Emmaus, PA 18049-0368	Upper Chichester Town- ship Delaware County	Boozers Run	TRC
PA0056375	Carol C. Curcio P. O. Box 312 Dublin, PA 18917	Hilltown Township Bucks County	UNT Deep Run Creek	TRC

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

Applications under the Pennsylvania Clean Streams Law

(Part II Permits)

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection (Department).

Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department at the address indicated above each permit application or plan. Each written protest should contain the following: name, address and telephone number; identification of the plan or application to which the protest is addressed; and a concise statement in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protest. Each commentator will be notified in writing of the time and place if a hearing or conference concerning the plan, action or application to which the protest relates is held. To insure consideration by the Department prior to final action on permit applications and proposed plans, initial protests and additions or amendments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Industrial waste and sewerage applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

A. 2699201. Industrial waste. **The Municipal Authority of the Township of Washington**, 1390 Fayette Avenue, Belle Vernon, PA 15012. Application for the construction and operation of a water treatment plant located in Fayette City Borough, **Fayette County**.

A. 6374406, Amendment No. 3. Sewerage. **The Canonsburg-Houston Joint Authority**, 68 East Pike Street, Canonsburg, PA 15317. Application for the construction and operation of approximately 12,900 l. f. of interceptor sewer parallel to the existing interceptor sewer and the expansion and operation of the raw sewage pump station located in North Strabane Township and Canonsburg Borough, **Washington County**.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

WQM Permit No. 2099411. Sewage. **West Fallowfield Township**, 6993 Westford Road, Hartstown, PA 16131-0157. This project is for the construction and operation of a sewage treatment facility to serve the Hartstown-Adamsville area in West Fallowfield Township, **Crawford County**.

WQM Permit No. 4399423. Sewage. **Wilbur J. Taylor, SRSTP**, 7 Bell Road, Grove City, PA 16127. This project is for the construction of a single residence sewage treatment plant in Pine Township, **Mercer County**.

INDIVIDUAL PERMITS

(PAS)

Stormwater Individual

The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit and special conditions. These proposed determinations are tentative. Limitations are provided in the permit as erosion and sedimentation control measures and facilities which restrict the rate and quantity of sediment discharge.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the Regional Office or County Conservation District Office indicated as the responsible office, within 30 days from the date of this public notice. A copy of the written comments should be sent to the County Conservation District Office. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Regional Office of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 30-day comment period, the Water Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sedimentation control plan for the construction activity, are on file and may be inspected at the County Conservation District Office or the Department's Regional Office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.

Lehigh County Conservation District, District Manager, Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.

NPDES Permit PAS10Q184. Stormwater. **Walter Frisch, Anthony Danner**, 5664 Railroad Road, Germansville, PA 18053, has applied to discharge

stormwater from a construction activity located in Heidelberg Township, **Lehigh County**, to an UNT to Jordan Creek.

NPDES Permit PAS10Q185. Stormwater. **Lehigh Valley Hospital & Health Network**, Carol Anne Bury, P. O. Box 689, Allentown, PA 18105-1556, has applied to discharge stormwater from a construction activity located in the City of Bethlehem, **Lehigh County**, to Monocacy Creek.

SAFE DRINKING WATER

Applications received for a Construction Permit issued under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

Application No. Minor Amendment. The Department has received a permit application from **Pike Township Municipal Authority**, P. O. Box 27, Hixon Road, Curwensville, PA 16833, Pike Township, **Clearfield County**. The project involves the construction of 150,000 gallon bolted steel, glass fused to steel or painted steel finished water storage tank, approximately 270 linear feet of 8-inch water transmission line and appurtenances.

Application No. Minor Amendment. The Department has received a permit application from **Hamilton Township Municipal Authority**, P. O. Box 236, Morris Run, PA 16939, Hamilton Township, **Tioga County**, to replace the filter media and support gravel in the existing microfloc package filtration plant at the Morris Run Water Treatment Facility.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 1

Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 302, 303, 304 and 305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, or a combination of the cleanup standards, or who receives approval of a special industrial area remediation identified under the act, will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the

person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified as proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period the municipality may request that the person identified, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved, and comments, should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the Environmental Cleanup Program Manager in the Department's Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Regional Office: Environmental Cleanup Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

Amtrak 2.5 Acre Site—Richmond Station, City of Philadelphia, **Philadelphia County**. Robert A. LaRosa, P.E., Senior Environmental Compliance Engineer, National Railroad Passenger Corp., 30th and Market Streets, Philadelphia, PA 19104, has submitted a Notice of Intent to Remediate site soil contaminated with lead, heavy metals, BTEX and polycyclic aromatic hydrocarbons; and groundwater contaminated with BTEX and polycyclic aromatic hydrocarbons. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Inquirer* on August 30, 1999.

SOLID AND HAZARDOUS WASTE

REQUEST FOR PROPOSALS FOR MUNICIPAL SOLID WASTE CAPACITY

The following notices are placed through the Department of Environmental Protection as required by section 502(d) of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904).

Request for Proposal

In accordance with the Municipal Waste Planning, Recycling and Waste Reduction Act and section 272 of the Pennsylvania Solid Waste Rules and Regulations (as amended), the County of Indiana is seeking waste disposal capacity for municipal solid waste (MSW) for the next 10 years. Indiana County is hereby soliciting responses to qualify facilities to provide processing/disposal capacity for County-generated MSW beginning on or after February 1, 2000.

Copies of Indiana County's Facility Qualification Request (FQR) may be obtained from the Indiana County Solid Waste Authority, 1715 Route 119 South, Homer City, PA 15748, (724) 479-0444. All responses must be made on the Submittal Form and in accordance with the Instructions to Respondents provided in the FQR. Respondents must submit the original and three copies to the address listed above, attention Timothy T. Long. Responses must be received by the Indiana County Solid Waste Authority on or before November 22, 1999.

Indiana County reserves the right to reject any or all responses and to waive any informalities in the solicitation process.

AIR QUALITY

Notice of Plan Approval and Operating Permit Applications

Nonmajor Sources and Modifications

The Department of Environmental Protection (Department) has developed an integrated plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities. Although the sources covered by these applications may be located at a major facility, the sources being installed or modified do not trigger major new source review or prevention of significant deterioration requirements.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Offices identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to file protests or comments on the proposed plan approval and/or operating permits must submit the protest or comment within 30 days from the date of this notice. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department's Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior to the date of the hearing.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121-143, the Federal Clean Air Act and regulations adopted under the act.

OPERATING PERMITS

Applications received and intent to issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001-4015).

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

06-319-099E: General Battery Corp. (P. O. Box 13995, Reading, PA 19612-3995), for a lead/acid battery manufacturing facility controlled by various collectors in Laureldale/Muhlenberg Township, **Berks County**. The sources are subject to 40 CFR Part 60, Subpart KK, Standards of Performance for New Stationary Sources.

07-03019: New Enterprise Stone & Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664), for operation of a stone crushing plant controlled by wet suppression in Greenfield Township, **Blair County**.

28-05004A: Martin's Famous Pastry Shoppe, Inc. (1000 Potato Roll Lane, Chambersburg, PA 17201), for operation of the Chambersburg Bakery in Guilford Township, **Franklin County**.

44-304-009: DONSCO, Inc. (P. O. Box 2001, Wrightsville, PA 17368), for operation of a cold-box core machine at the Belleville foundry in Union Township, **Mifflin County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

41-310-001F: Hanson Aggregates Pennsylvania, Inc. (P. O. Box 231, Easton, PA 18044-0231), for operation of stone crushing and screening equipment and associated air cleaning device (a fabric collector) at the Pine Creek Quarry in Limestone Township, **Lycoming County**.

19-310-002C: Hanson Aggregates Pennsylvania, Inc. (P. O. Box 231, Easton, PA 18044-0231), for operation of a vertical shaft impact crusher and associated air cleaning device (a fabric collector) at the Bloomsburg Quarry in Hemlock Township, **Lycoming County**. This crusher is subject to Subpart OOO of the Federal Standards of Performance for New Stationary Sources.

08-303-006B: Dalrymple Gravel and Contracting Co., Inc. (2105 South Broadway, Pine City, NY 14871), for operation of a drum mix asphalt concrete plant and associated air cleaning device (a fabric collector) in Athens Township, **Bradford County**. This plant is subject to Subpart I of the Federal Standards of Performance for New Stationary Sources.

Notice of Intent to Issue Title V Operating Permits

Under 25 Pa. Code § 127.521, notice is given that the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the following facilities. These facilities are major facilities subject to the operating permit requirements under Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F and G (relating to operating permit requirements; and Title V operating permits).

Appointments to review copies of the Title V application, proposed permit and other relevant information must be made by contacting Records Management at the regional office telephone number noted. For additional information, contact the regional office noted.

Interested persons may submit written comments, suggestions or objections concerning the proposed Title V permit to the regional office within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the person submitting the comments, along with the reference number of the proposed permit. The commentator

should also include a concise statement of objections to the permit issuance and the relevant facts upon which the objections are based.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period and will provide notice of any scheduled public hearing at least 30 days in advance of the hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

Southeast Regional Office: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, Attn: Edward Brown, (610) 832-6242.

46-00062. Jefferson Smurfit/Container Corp. (500 Church Road, North Wales, PA 19454), in Upper Gwynedd Township, **Montgomery County**. The facility's major emission points include: two boilers, three rotogravure presses, solvent cleaning unit, Renzmznn Washing Unit, and a thermal oxidizer which emit major levels of VOCs.

09-00012: Klearfold (364 Valley Road, Warrington, PA 18976), in Warrington Township, **Bucks County**. The facility's major emission points include: three silk screen presses, four sheet fed, nonheatset, offset lithographic presses, a finishing section with gluers, a storage and mixing section which emit major levels of VOC.

23-00045: Sunoco, Inc. (R&M) Twin Oaks Terminal (4041 Market Street, Aston, PA 19014), in Upper Chichester Township, **Delaware County**. The facility's major emission points include: four storage tanks, gasoline/distillate loading rack, carbon absorber and a flash absorber system, two additive tanks, heating oil tank, two oil and water separators and furnace which emit major levels of VOCs and HAPs.

Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, Attn: Michael Salko, (570) 826-2531.

35-00004: Plainwell Tissue, Inc. (Main Street, Ransom, PA 18653), in Ransom Township, **Lackawanna County**. The facility's major source of emissions include the paper mill area which primarily emit volatile organic compounds (VOCs).

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Attn: Mark Wayne, (412) 442-4161.

TVOP-04-00059: Koppel Steel Corp., Koppel Plant (P. O. Box 750, Beaver Falls, PA 15010), in Beaver Falls, **Beaver County**. The facility is a steel melting operation and subsequent production of hot rolled bars in both carbon and alloy grades. The melt shop features an electric arc furnace, a ladle refining station and a continuous caster. Other sources at this major facility include a rotary hearth furnace and other natural gas sources that support the steel making operations. The facility has the potential to emit greater than 100 tons of the following pollutants oxides of nitrogen (NO_x), carbon monoxide, oxides of sulfur and volatile organic compounds respectively.

Nitrogen Oxides (NO_x) Allowance Program

Proposed Revisions to Operating Permit No. OP-24-0009 for Willamette Industries, Inc. for Boilers 81 and 82 to remove Conditions Relating to the NO_x Allowance Requirements in 25 Pa. Code §§ 123.101—123.120.

The Department of Environmental Protection (Department) intends to issue a revised Operating Permit to

remove the requirements of 25 Pa. Code §§ 123.101—123.120 (relating to NO_x allowance requirements) for Willamette Industries, Inc. Willamette shall operate Boilers Nos. 81 and 82 so that the heat input value for each boiler is less than 250 MMBtu as measured on an hourly basis. This measurement shall be performed in accordance with a Department approved protocol.

If Willamette operates either Boiler 81 or 82 at a maximum heat input value of 250 MMBtu, or greater, on an hourly basis, the boilers shall be subject to the nitrogen oxide allowance requirements of 25 Pa. Code §§ 123.101—123.120 and shall be treated as a new affected source under § 123.117; and Willamette shall not be entitled to any allowances through the opt-in provisions of § 123.116.

Persons wishing to file protests or comments on the proposed Operating Permit must submit the protest or comment within 30 days from the date of this notice. Interested persons may also request that a hearing be held concerning the proposed permit. Any comments or protests filed at the previous address must include a concise statement of the objections to the issuance of the permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation, where the facility is located, at least 30 days prior to the date of the hearing.

Copies of the proposed permit and other relevant information are available for review at the Bureau of Air Quality, Division of Permits, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325.

PLAN APPROVALS

Applications received and intent to issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015).

Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.

PA-46-0084: Wampler Foods, Inc. (Route 113 and Allentown Road, Franconia, PA 18924), for installation of a wet scrubber in Franconia Township, **Montgomery County**.

PA-46-0197: Hershey Foods Corp. (2452 Quakertown Road, Pennsburg, PA 18073), for installation of a starch deduster (fabric filter) in Upper Hanover Township, **Montgomery County**.

PA-23-0001L: Sunoco, Inc. (Delaware Avenue and Green Street, Marcus Hook, PA 19061), for construction of two racing fuel storage tanks in Marcus Hook Borough, **Delaware County**.

PA-46-0025G: Lonza, Inc. (900 River Road, Conshohocken, PA 19428), for modification of two prescrubbers in Upper Merion Township, **Montgomery County**.

PA-23-0001M: Sunoco, Inc. (Delaware Avenue and Green Street, Marcus Hook, PA 19061), for construction of a CO boiler in Marcus Hook Borough, **Delaware County**.

PA-46-0150: Montgomery County SPCA (1059 Sweifford Road, Perkiomenville, PA 18074), for construction of an animal crematory in Upper Frederick Township, **Montgomery County**.

PA-23-0001N: Sunoco, Inc. (R&M) (Delaware Avenue and Green Street, Marcus Hook, PA 19061), for modification of boiler no. 9 in Marcus Hook Borough, **Delaware County**.

PA-09-0063A: New Hope Crushed Stone Company (6970 Phillips Mill Road, New Hope, PA 18938), for construction of a stone crushing plant in Solebury Township, **Bucks County**.

PA-46-0123: Wesco Industrial Products, Inc. (1250 Welsh Road, Lansdale, PA 19446), for modification of spray paint booths in Montgomery Township, **Montgomery County**.

PA-46-0198: Blommer Chocolate Co. (1101 Blommer Drive, East Greenville, PA 18041), for construction of an alkalization reactor in Upper Hanover Township, **Montgomery County**.

PA-46-0198A: Blommer Chocolate Co. (1101 Blommer Drive, East Greenville, PA 18041), for construction of a cocoa bean deshelling operation in Upper Hanover Township, **Montgomery County**.

PA-09-0087A: Solkatronic Chemicals (351 Philadelphia Avenue, Morrisville, PA 19067), for construction of an ammonia scrubber in Falls Township, **Bucks County**.

PA-09-0125: Naceville Materials (5031 Pt. Pleasant Pike, Doylestown, PA 18901), for modification of a crushing plant in Plumstead Township, **Bucks County**.

09-312-025GP: Fres-co System USA, Inc. (3005 State Road, Telford, PA 18969), for construction of aboveground storage tanks in West Rockhill Township, **Bucks County**.

09-312-024GP: Fres-co System USA, Inc. (3005 State Road, Telford, PA 18969), for construction of aboveground storage tanks in West Rockhill Township, **Bucks County**.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

31-05011A: U. S. Silica Co. (P. O. Box 187, Berkeley Springs, WV 25411-0187), for construction of a low iron sand project for a facility in Brady Township, **Huntingdon County**. This source is subject to 40 CFR, Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

31-309-029B: Advanced Glassfiber Yarns, LLC (1200 Susquehanna Avenue, Huntingdon, PA 16652), for modification of the South Forming, glass batch mixing, blending and delivery system controlled by fabric collectors in Huntingdon Borough, **Huntingdon County**.

67-320-022D: Fry Communications, Inc. (800 West Church Road, Mechanicsburg, PA 17055), for installation of a heatset printing press with control at Building No. 5 (Plant No. 3) in Manchester Township, **York County**.

PA-67-03075: Central PA Veterinary Emergency Group, PC (3256 Susquehanna Trail North, York, PA 17402), for installation of a small pet crematorium in Manchester Township, **York County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

17-329-002: Petroleum Development Corp. (103 East Main Street, P. O. Box 26, Bridgeport, WV 26330-1706), for construction of a 115 horsepower natural gas-fired reciprocating internal combustion compressor engine and a natural gas dehydrator at the Tate Compressor Site in Greenwood Township, **Clearfield County**.

17-329-003: Petroleum Development Corp. (103 East Main Street, P. O. Box 26, Bridgeport, WV 26330-1706), for construction of a 180 horsepower natural gas-fired reciprocating internal combustion compressor engine and a natural gas dehydrator at the Passmore Compressor Site in Bell Township, **Clearfield County**.

Notice of Intent to Approve

Plan Approval PA-63-014B

Under 25 Pa. Code § 127.44(a)(4), the Department of Environmental Protection (Department) intends to issue a Plan Approval to Duquesne Light for the installation of low NO_x burners at the Elrama Power Station, as described in its application received on March 19, 1999.

Based on the information provided by the applicant and on the Department's analysis of that information, these installations will result in a potential NO_x reduction of 734 tons/yr.

Copies of the application, the Department's analysis and other documents used in evaluation of the application are available for public inspection during normal business hours at the Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222.

In order for the Department to assure compliance with all applicable standards, the Department proposes to place the following conditions on the Plan Approval:

Special Conditions for Plan Approval PA-63-014B

3. This Plan Approval is for the installation of DDI low NO_x burning systems and associated modifications on Unit 4 of the Duquesne Light Co. Elrama Power Station located at Route 837 in Union Township, Washington County.

4. NO_x emissions from this facility shall be limited to .54 lb/mmBtu based on a 30-day rolling average.

5. For periods when Unit 4 is out of service for longer than 30 days, the NO_x emissions from this facility shall be limited to .57 lbs/mmBtu based on a 30-day rolling average.

6. NO_x emissions from this facility shall be limited to 13,170 tons in any period of 12 consecutive months.

7. The Department may revise the NO_x (as NO₂) emission limits in this Plan Approval based on a minimum of two quarters of actual emission data from the continuous emission monitor.

8. This Plan Approval authorizes temporary operation of the sources covered by this Plan Approval provided the following conditions are met.

a) The Department must receive written notice from the owner/operator of the completion of construction and the operator's intent to commence operation at least 5 working days prior to the completion of construction. The notice should state when construction will be completed and when the operator expects to commence operation.

b) Operation is authorized only to facilitate the start-up and shake-down of sources and air cleaning devices, to permit operations pending the issuance of an Operating Permit or to permit the evaluation of the sources for compliance with all applicable regulations and requirements.

c) This condition authorizes temporary operation of the sources for a period of 180 days from the date of

commencement of operation, provided the Department receives notice from the owner/operator under subpart (a), above.

d) The owner/operator may request an extension if compliance with all applicable regulations and Plan Approval requirements has not been established. The extension request shall be submitted in writing at least 15 days prior to the end of this period of temporary operation and shall provide a description of the compliance status of the source, a detailed schedule for establishing compliance, and the reasons compliance has not been established.

e) The notice submitted by the owner/operator under subpart (a), above, prior to the expiration of this Plan Approval, shall modify the plan approval expiration date. The new plan approval expiration date shall be 180 days from the date of the written notice.

Persons wishing to provide the Department with additional information which they believe should be considered prior to the issuance of the Plan Approval may submit the information to the Department at the following address. A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed Plan Approval (specify the Plan Approval number).
- Concise statements regarding the relevancy of the information or objections to issuance of the Plan Approval.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in this newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines the notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to: Joseph Pezze, Regional Air Quality Program Manager, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

For additional information persons may contact the following at the same address: Thomas J. Joseph, Air Pollution Control Engineer III, Air Quality Control.

REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)

Proposed Revision to the State Implementation Plan for Oxides of Nitrogen and Volatile Organic Compounds and Public Hearing

Approval of an amendment of a Reasonably Available Control Technology (RACT) plan for PP&L, Inc. in Derry Township, Montour County.

The Department of Environmental Protection (Department) has made a preliminary determination to approve an amendment of a Reasonably Available Control Technology (RACT) plan and an amendment to the State Implementation Plan (SIP) for an electric generating facility (Montour Steam Electric Station) owned and operated by PP&L, Inc. in Derry Township, Montour County.

The proposed SIP revision does not adopt new regulations. It incorporates the provisions and requirements

contained in the amendment of the RACT approval for the facility which are intended to comply with existing regulations.

The preliminary RACT determination, if finally approved, will result in the revision of Operating Permit OP-47-0001A issued on September 18, 1997, and will be submitted to the United States Environmental Protection Agency (EPA) as a revision to Pennsylvania's State Implementation Plan.

The following is a summary of the preliminary RACT determination which the Department proposes to incorporate into Operating Permit OP-47-0001A, as a revision to the permit, for three emergency diesel generators:

NO_x (Nitrogen Oxides) RACT Determination

- Under the presumptive RACT requirements of 25 Pa. Code § 129.93(c), each of the three respective emergency diesel generators shall be maintained and operated in accordance with manufacturer's specifications and good air pollution control practices. Additionally, none of the respective three generators shall be operated 500 or more hours in any 12 consecutive month period.

VOC (Volatile Organic Compound) RACT Determination

- Under the RACT requirements of 25 Pa. Code §§ 129.91—129.95, the total combined potential to emit volatile organic compounds from the respective three emergency diesel generators shall not exceed 3 pounds per hour or 2.7 tons per year (as determined by the Department). The respective three generators shall additionally comply with the presumptive RACT requirements specified elsewhere in the permit.

One public hearing will be held for the purpose of receiving comments on the proposed operating permit revision and the proposed SIP revision. The hearing will be held on December 2, 1999, at 1 p.m. at the Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA. The public is invited to comment on the proposal. Persons interested in commenting are invited to appear at the public hearing.

Persons wishing to present testimony at the hearing should contact Daniel Spadoni at (570) 327-3659 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to a maximum of 10 minutes per individual and two written copies of the oral testimony are requested. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodations to do so should contact Daniel Spadoni at (570) 327-3659 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Those unable to attend the hearing, but wishing to comment, should provide written comments to David W. Aldenderfer, Air Quality Environmental Program Manager, Pennsylvania DEP, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448. Comments must be received by the Department by no later than December 17, 1999.

All pertinent documents are available for review from 8 a.m. to 4 p.m. in the Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling (570) 327-3693.

MINING

APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District mining office indicated above each application. Where a 401 water quality certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for the certification.

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.

Coal Applications Received

32910105. Permit Revision, **GLR Mining, Inc.** (P. O. Box 105, Clymer, PA 15728), for a land use change from pastureland to unmanaged natural habitat on the lands of David G. Mock Estate and Elmer V. and Laura Mae Willard in Canoe Township, **Indiana County**, affecting 52.8 acres, receiving stream unnamed tributary to Brewer Run. Application received September 30, 1999.

Knox District Office, P. O. Box 669, Knox, PA 16232.

37990103. **Amerikohl Mining, Inc.** (202 Sunset Drive, Butler, PA 16001). Commencement, operation and restoration of a bituminous surface strip operation in Washington Township, **Lawrence County** affecting 108.6 acres. Receiving streams: Potter Run; Unnamed tributary thereto. Application received October 6, 1999.

16793005. **Terry Coal Sales, Inc.** (P. O. Box 58, Distant, PA 16223). Renewal of an existing bituminous surface strip and auger operation in Redbank Township, **Clarion County**, affecting 624.1 acres. Receiving streams: Unnamed tributary to Middle Run; an unnamed tributary to Leisure Run. Application for reclamation only. Application received October 7, 1999.

16693007. **Terry Coal Sales, Inc.** (P. O. Box 58, Distant, PA 16223). Renewal of an existing bituminous surface strip, auger and tippie refuse disposal operation in Redbank Township, **Clarion County**, affecting 618.5 acres. Receiving streams: Unnamed tributaries to Town Run; Town Run; Unnamed tributary to Middle Run; Middle Run; all to Redbank Creek. Application for reclamation only. Application received October 7, 1999.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

63940102. **Mulligan Mining, Inc.** (5945 Pudding Stone Lane, Bethel Park, PA 15102). Application to transfer permit currently issued to Bologna Coal Company for a bituminous surface mine site located in Smith Township, **Washington County**, affecting 108.5 acres. Receiving streams: ephemeral drainage to Burgetts Fork to Raccoon Creek to Ohio River. Application received: August 26, 1999.

03910101. **Thomas J. Smith, Inc.** (R. D. 1, Box 260D, Shelocta, PA 15774). Application received to revise the permit to include changes to the erosion and sedimentation plan, a 100 foot road variance and a 100 foot stream variance and construction of a stream crossing at a bituminous surface/auger mining site located in Boggs Township, **Armstrong County**, affecting 208.5 acres. Receiving streams: unnamed tributaries to North Fork of Pine Creek to Pine Creek to the Allegheny River. Application received: October 4, 1999.

65990105. **V. P. Smith Co., Inc.** (P. O. Box 242, Ligonier, PA 15658). Application received for commencement, operation and reclamation of a bituminous surface mine located in Salem Township, **Westmoreland County**, proposed to affect 138.1 acres. A social and economic justification is included with this application. Receiving streams: unnamed tributaries of Beaver Run and Thorn Run to Beaver Run Reservoir to Kiskiminetas River to Allegheny River. Application received: October 1, 1999.

McMurray District Office, 3913 Washington Road, McMurray, PA 15317.

33971301. Laurel Energy, L. P. (One Energy Place, Suite 7500, Latrobe, PA 15650), to transfer the permit for the Dora No. 8 Mine in Perry Township, **Jefferson County** from Doverspike Bros. Coal Co., no additional discharges. Application received August 24, 1999.

30743701. LTV Steel Co., Inc. (200 Public Square, Cleveland, OH 44114-2308), to renew the permit for the Nemacolin Coal Refuse Disposal Area in Cumberland Township, **Greene County**, renewal, no additional discharges. Application received September 15, 1999.

30841317. Consol PA Coal Co. (P. O. Box 174, Graysville, PA 15337), to revise the permit for the Enlow Fork Mine in Richhill Township, **Greene County**, to change water handling from C2 borehole to Bailey Slurry Pond, no additional discharges. Application received September 21, 1999.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

54840207C4. CLS Coal Company (P. O. Box 81, Port Carbon, PA 17965), correction to an existing coal refuse reprocessing operation in Branch and Reilly Townships, **Schuylkill County** affecting 90.0 acres, receiving stream—Muddy Branch Creek. Application received September 22, 1999.

54900105C. Tuscarora Mines & Minerals Corporation (Box 116, Tuscarora, PA 17982), correction to an existing anthracite surface mine operation for a stream variance, in Schuylkill Township, **Schuylkill County** affecting 40.0 acres, receiving stream—intermittent creek to Schuylkill River. Application received September 22, 1999.

Knox District Office, P. O. Box 669, Knox, PA 16232. Noncoal Applications Received

10990302. Quality Aggregates, Inc. (200 Neville Road, Pittsburgh, PA 15225). Commencement, operation and restoration of a limestone and Lower Kittanning operation in Marion Township, **Butler County**, affecting 127.5 acres. Receiving streams: Three unnamed tributaries to North Branch of Slippery Rock Creek; North Branch of Slippery Rock Creek to Slippery Rock Creek; one unnamed tributary to Slippery Rock Creek; Slippery Rock Creek to Connoquenessing Creek to Beaver River. Application to include a land use change from Forestland to Unmanaged Natural Habitat on the lands of John C. Kay, Jr., William A. Bovard, David L. Bovard, Jackson W. Gray, Quality Aggregates, Inc. and Patsy V. Martino. Application received September 30, 1999.

302831-10990302-E-1. Quality Aggregates, Inc. (200 Neville Road, Pittsburgh, PA 15225). Application for a stream encroachment to encroach to within 25 feet of and construct a temporary stream crossing over an unnamed tributary to Slippery Rock Creek located on the Jackson W. Gray property in Marion Township, **Butler County**, affecting 127.5 acres. Receiving streams: Three unnamed tributaries to North Branch of Slippery Rock Creek; North Branch of Slippery Rock Creek to Slippery Rock Creek; one unnamed tributary to Slippery Rock Creek; Slippery Rock Creek to Connoquenessing Creek to Beaver River. Application received September 30, 1999.

302831-10990302-E-2. Quality Aggregates, Inc. (200 Neville Road, Pittsburgh, PA 15225). Application for a stream encroachment to encroach to within 25 feet of an unnamed tributary to North Branch Slippery Rock Creek located on the David L. Bovard property in Marion Township, **Butler County**, affecting 127.5 acres. Receiving streams: Three unnamed tributaries to North Branch

of Slippery Rock Creek; North Branch of Slippery Rock Creek to Slippery Rock Creek; one unnamed tributary to Slippery Rock Creek; Slippery Rock Creek to Connoquenessing Creek to Beaver River. Application received September 30, 1999.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

8073SM4A2C4. Reading Materials, Inc. (394 Sanatoga Road, Pottstown, PA 19464), correction to an existing quarry operation for a depth correction and update to NPDES Permit No. PA0594849 in Lower Pottsgrove Township, **Montgomery County** affecting 52.93 acres, receiving stream—Sanatoga Creek. Application received September 20, 1999.

6478NC4C. David H. Martin Excavating, Inc. (4961 Cumberland Highway, Chambersburg, PA 17201), renewal of NPDES Permit No. PA0121606 in Antrim Township, **Franklin County**, receiving stream—unnamed tributary to Muddy Run. Application received September 23, 1999.

APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

ENCROACHMENTS

The following Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection (Department). Section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)) requires the State to certify that the involved projects will not violate the applicable provisions of 33 U.S.C.A. §§ 1311 — 1313, 1316 and 1317, as well as relevant State requirements. Initial requests for 401 certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Safety or Encroachment Permit or the approval of Environmental Assessments must submit comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.

Northeast Regional Office: Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

E64-207. Encroachment. Robert and Gerald Bunting, R. R. 2, Box 1100, Honesdale, PA 18431. To dredge a 100' × 50' section of Lake Cadjaw shoreline. The area will give access to the lake's water resources for farmland irrigation. The project is located on the north side of the intersection S.R. 3036 and S.R. 3031. (Honesdale, PA Quadrangle N: 5.25 inches; W: 3.25 inches), Cherry Ridge Township, **Wayne County** (Philadelphia District, U. S. Army Corps of Engineers).

Northcentral Region: Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third St., Suite 101, Williamsport, PA 17701.

E08-350. Encroachment. **Paul E. Heise, Dist. Engineer, PA Dept. of Transportation**, P. O. Box 218, Montoursville, PA 17754. To remove sediment deposits from under the SR 14 bridge. The work includes 250 feet upstream of the structure, under the structure, and 200 feet downstream of the structure (Troy, PA Quadrangle N: 4.76 inches; W: 5.69 inches) in Troy Borough, **Bradford County**. This project proposes to impact 500 linear feet of Fall Brook Creek, which is designated as a trout stocked fishery and does not propose to impact any wetlands.

E14-360. Encroachment. **Jeff and Angel Woodward**, P. O. Box 540, Port Matilda, PA 16870-0540. To maintain a single span bridge with a span of 34 feet and an unclear of 5 feet. This is a post-construction permit application (Port Matilda, PA Quadrangle N: 15.9 inches; W: 9.1 inches) in Worth Township, **Centre County**. This project impacted 20 linear feet of an unnamed tributary to Bald Eagle Creek which is designated as cold water fishery and does not propose to impact any wetland.

E18-277. Encroachment. **James W. Miller, P.E., PA DOT**, Engineering District 2-0, 1924-30 Daisy Street, P. O. Box 342, Clearfield, PA 16830. To maintain approximately 14,000 tons of rock and fill in the floodway of Young Woman's Creek approximately 400 feet east of the center of Gleasonston (Renovo-East, PA Quadrangle N: 19.0 inches; W: 7.5 inches) in Chapman Township, **Clinton County**. The project will not impact on wetlands or the stream. Young Woman's Creek is a high quality-cold water fisheries stream.

E49-231. Encroachment. **Charles Hopta, County Engineer, Northumberland County Commissioners**, Court House, 201 Market Street, Sunbury, PA 17801. To remove the existing stone masonry abutment and to construct and maintain a new reinforced concrete abutment located 0.65 mile east on LR 3010 from Red Cross then north on T-412 to the site (Pillow, PA Quadrangle N: 16.5 inches; W: 4.1 inches) in Washington Township, **Northumberland County**. This project proposes to impact 40 linear feet of Schwaben Creek, which is designated as a trout stocked fishery and does not propose to impact any wetlands.

E53-335. Encroachment. **Gary Lamphier, Harrison Township**, P. O. Box 92, Harrison Valley, PA 16927. To maintain a 6 foot corrugated metal pipe on Marsh Creek located 0.1 mile north of SR 1010 (Harrison Valley, PA Quadrangle N: 17.8 inches; W: 13.9 inches) in Harrison Township, **Potter County**. This project proposes to impact 30 linear feet of Marsh Creek, which is designated as a warm water fishery and does not propose to impact any wetlands.

E59-389. Encroachment. **Delmar Township**, RR 5, Box 70A, Wellsboro, PA 16901. To (1) remove existing structures; (2) construct, operate and maintain two minor road crossings of Pine Island Run—Exceptional Value; (3) construct and maintain rock stream deflectors in and along Pine Island Run—Exceptional Value; and (4) place and maintain roadway fill and wearing surfaces in the floodway of the same waterway for dirt and gravel roadway improvements. The dirt and gravel road project covers 1.3 miles of Delmar Township Road Number 355 (T-355). The upstream most minor road crossing shall be constructed with a corrugated metal arch culvert pipe that has a minimum span of 6.92 feet, a rise of 4.75 feet

and a length of 36.0 feet. The downstream most minor road crossing shall be constructed with a corrugated metal culvert that has a minimum diameter of 6.0 feet and a length of 50.0 feet. The rock stream deflectors shall be constructed with a minimum of R-8 riprap. The project will not impact wetlands while impacting a maximum of 120.0 feet. The project is located along the western right-of-way of S. R. 0414 approximately 1.3 miles east of Clay Mine Road and T-355 (Tiadaghton, PA Quadrangle N: 3.3 inches; W: 5.5 inches) in Delmar Township, **Tioga County**. This permit does not authorize any temporary or permanent wetland impacts.

E59-390. Encroachment. **Erick Coolidge, LE-MA-RE Farms**, R. R. 7, Box 106, Wellsboro, PA 16901. To periodically remove gravel and sediment for a period of 5 years on an as-needed basis for a distance of 1,800 feet and to construct and maintain an agricultural crossing and stream bank fencing. The project is located in and adjacent to an unnamed tributary to Wilson Creek in Collidge Hollow beginning at the intersection of T-403 and Route 287 (Antrim, PA Quadrangle N: 12.2 inches; W: 5.3 inches) in Delmar Township, **Tioga County**.

Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E32-409. Encroachment. **Indiana Borough**, 80 North Eighth Street, Indiana, PA 15701. To remove the existing structure and to construct and maintain two 253.5-foot long, 71-inch × 47-inch corrugated metal pipe culverts in an unnamed tributary to Marsh Run (CWF) as part of the Water Street Park Expansion Project located at the southwest corner of the intersection of Water Street and Second Street (Indiana, PA Quadrangle N: 22.5 inches; W: 2.3 inches) in the Borough of Indiana, **Indiana County**.

E63-476. Encroachment. **Washington County Commissioners**, Courthouse Square, 100 West Beau Street, Washington, PA 15301. To rehabilitate and maintain the existing Longdon Bridge (Wheeling Bridge No. 19) having two spans of 40.0 feet each with a minimum underclearance of 6.0 feet across Templeton Fork Wheeling Creek (TSF) located on Township Road 414 (Wind Ridge, PA Quadrangle N: 18.8 inches; W: 10.0 inches) in West Finley Township, **Washington County**.

E02-1290. Encroachment. **The McCandless Township Sanitary Authority**, 9600 Perry Highway, Pittsburgh, PA 15237. To construct and maintain a stream enclosure consisting of a pipe arch culvert having a span of 9.6 feet with an underclearance of 6.5 feet in an unnamed tributary to Pine Creek (CWF) and to place and maintain fill in approximately 0.28 acre of wetlands (PEM/PSS) for the purpose of constructing a management and maintenance facility located approximately 1,600 feet northwest from the intersection of McKnight Road and Arcadia Drive (Emsworth, PA Quadrangle N: 14.4 inches; W: 4.3 inches) in McCandless Township, **Allegheny County**.

Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

E10-307. Encroachment. **Victory Christian Church**, 216 Mystic Pine Trail, Cranberry Township, PA 16066. To include the following activities as part of the expansion of the Victory Christian Church: 1. To place and maintain two 70-foot-long by 103-inch-wide by 71-inch-high pipe arch culverts and associated fill in a tributary to Brush Creek (WWF) for access to parking areas; 2. To relocate and maintain an existing sanitary sewer across and

under a de minimis wetland area (0.011 acre); 3. To place fill in a de minimis wetland area (0.029 acre) of wetland (PEM/PSS) to expand existing parking area and to relocate 140 linear feet of a tributary to Brush Creek (WWF); 4. To expand an existing stormwater detention basin by placing an earthen embankment within the 100-year floodway of a tributary to Brush Creek (WWF).

The project is located at the Victory Christian Church at 216 Mystic Pine Trail approximately 2 miles west of the intersection of SR 19 and SR 228 (Baden, PA Quadrangle N: 10.4 inches; W: 1.5 inches) located in Cranberry Township, **Butler County**.

E16-112. Encroachment. **Redbank Township**, P. O. Box 47, Fairmount City, PA 16224. To remove the existing structure and to construct and maintain a prestressed concrete arch culvert having a clear span of 12.315 meters and an underclearance of 2.855 meters on a 63 degree skew across Pine Creek (CWF) on T-510. This project will also include placement of fill in 0.0467 hectare of a wetland and the construction of a 0.0552 hectare replacement wetland. The project is located on T-510 across Pine Creek approximately 600 feet northwest of the intersection of T-510 and SR 28 (New Bethlehem, PA Quadrangle N: 10.1 inches; W: 0.2 inch) located in Redbank Township, **Clarion County**.

E62-353. Encroachment. **John R. and Judith A. Morley**, 210 River Road, Warren, PA 16365. To maintain a personal boat landing constructed without a permit consisting of a backfilled 30-foot-long by 4-foot-high retaining wall built of railroad ties and an access stairway within the 100-year floodway and along the Allegheny River (WWF, Nominated 1-A). The project is located along the Allegheny River (north side) approximately 1,500 feet southwest of the intersection of SR 6 and Preston Road (Warren, PA Quadrangle N: 15.8 inches; W: 10.0 inches) located in Conewango Township, **Warren County**.

E62-354. Encroachment. **PA Dept. of Transportation**, Engineering District 1-0, 255 Elm Street, P. O. Box 398, Oil City, PA 16301. To remove the existing structure and to construct and maintain a reinforced concrete box culvert having a waterway opening with a span of 12 feet and a rise of 8 feet across a tributary to Stillwater Creek (CWF) locally known as Stauffer Run on SR 957. This project will include placement of the box culvert invert approximately 1 foot 4 inches below the existing streambed elevation to allow for unobstructed access for aquatic organisms. This project is located on SR 957 across a tributary to Stillwater Creek approximately 150 feet east of the intersection of SR 957 and Stillwater Road (Sugar Grove, PA Quadrangle N: 19.1 inches; W: 13.7 inches) located in Borough of Sugar Grove, **Warren County**.

ENVIRONMENTAL ASSESSMENT

Requests for Environmental Assessment approval under 25 Pa. Code § 105.15 and requests for certification under section 401 of the Federal Water Pollution Control Act.

Central Office: Bureau of Waterways Engineering, 400 Market Street, 3rd Floor; P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.

EA06-006CO. Environmental Assessment. **Galen Hall Corporation** (815 Lancaster Avenue, Reading, PA 19607). To construct and maintain two nonjurisdictional dams across a tributary to Cacoosing Creek (WWF) to control stormwater at the proposed Galen Hall (Phase I) subdivision impacting 0.11 acre of wetlands (PFO) and

approximately 400 linear feet of stream channel. The proposed subdivision is located approximately 2,000 feet northwest of the intersection of Galen Hall Road and Cushion Peak Road (Sinking Spring, PA Quadrangle N: 8.9 inches; W: 12.5 inches) in South Heidelberg Township, **Berks County**.

EA28-001CO. Environmental Assessment. **J. Gary Rine** (45 Jumper Road, Shippensburg, PA 17257-9723). To construct and maintain a nonjurisdictional dam across a tributary to Conodoguinet Creek (HQ-CWF) for recreation located approximately 7,100 feet southwest of the intersection of Upper Horse Valley Road and Keefer Road (Fannettsburg, PA Quadrangle N: 6.3 inches; W: 9.0 inches) in Letterkenny Township, **Franklin County**.

ACTIONS

FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER (Part I Permits)

The Department of Environmental Protection (Department) has taken the following actions on previously received and requests for plan approval and has issued the following significant orders.

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514), and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of the written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Permit No. 6499401. Honesdale Borough Council, 958 Main Street, Honesdale, PA 18431. Permit to construct and operate a sewage pumping station, located in Honesdale Borough, **Wayne County**.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

NPDES Permit No. PA0039225. Sewage. **Blaine E. Rhodes Sewer Company**, P. O. Box 397, Reno, PA

16343-0397, is authorized to discharge from a facility located in Sugar Creek Borough, **Venango County** to the Allegheny River.

NPDES Permit No. PA0103446. Industrial waste. **Superior Greentree Landfill**, 635 Toby Road, Kersey, PA 15846, is authorized to discharge from a facility located in Fox Township, **Elk County** to an unnamed tributary to Bear Run and Little Toby Creek.

NPDES Permit No. PA0004898. Industrial waste. **Loranger Manufacturing Corporation, Clark Street**, P. O. Box 948, Warren, PA 16365, is authorized to discharge from a facility located in the City of Warren, **Warren County** to the Allegheny River.

NPDES Permit No. PA0221571. Industrial waste. **Loranger Manufacturing Corporation, Starbrick**, P. O. Box 948, Warren, PA 16365, is authorized to dis-

charge from a facility located in the City of Warren, **Warren County** to an unnamed tributary to Morse Run.

WQM Permit No. 2099410. Sewerage, **David S. Graham SRSTP**, 400 Ash Street, Kane, PA 16735. Construction of David S. Graham SRSTP located in North Shenango Township, **Crawford County**.

INDIVIDUAL PERMITS

(PAS)

The following NPDES Individual Permits for discharges of stormwater from construction activities have been issued.

Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10Q174	Richard Birdoff R. D. Management 810 7th Ave., 28th Floor New York, NY 10019	Lehigh County City of Allentown	Trout Creek
PAS10Q028-R	Byron B. Ashbrook Brook Haven Development Corp. 2910 Lindberg Ave. Allentown, PA	Lehigh County Lower Macungie Township	Little Lehigh
PAS10S020-R	Keystone Hollow Corp. P. O. Box 1158 Marshalls Creek, PA 18335	Monroe County Middle Smithfield Township	Tributaries to Sand Hill Creek and Pond Creek

Northcentral Region: Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third St., Williamsport, PA 17701.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10F078	Eastern States Exploration P. O. Box 178 Snow Shoe, PA 16874	Centre County Snow Shoe Township	Beech Creek, Rock Runk, Unt. Sandy Run

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS102305	Paul Agnew 9905 Harmonsburg Rd. Linesville, PA 16424	Crawford County Sadsbury Township	Conneaut Lake Unnamed Tributary

INDIVIDUAL PERMITS

(PAR)

Approvals to Use NPDES and Other General Permits

The following parties have submitted (1) Notices of Intent (NOIs) for coverage under General NPDES Permit(s) to discharge wastewater into the surface waters of this Commonwealth; (2) NOIs for coverage under General Permit(s) for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania; or (3) Notifications for First Land Application of Sewage Sludge.

The approval of coverage under these General Permits may be subject to one or more of the following: pollutant or effluent discharge limitations, monitoring and reporting, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective general permit. The Department of Environmental Protection (Department) has reviewed the NOIs and determined that they comply with administrative requirements of the respective permit application. Also, the Department has evaluated the First Land Application of Sewage Sludge for the sites applying for coverage under PAG-7, PAG-8 and PAG-9 and determined that the sites are suitable for land application of sewage sludge.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision: 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangement made for copying at the contact office noted.

The Department has acted on the following requests for coverage under the specified General Permit as follows:

*List of
General Permit Type*

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater From Construction Activities
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit for Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit For Beneficial Use of Exceptional Quality Sewage Sludge By Land Application
PAG-8	General Permit For Beneficial Use of Non-Exceptional Quality Sewage Sludge By Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit For Beneficial Use of Residential Septage By Land Application to Agricultural Land, Forest or a Land Reclamation Site

General Permit Type—PAG-2

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Schuylkill County West Mahanoy Township	PAR105792	Pennsylvania Power & Light Co. PP&L Service Center P. O. Box 236 Morea Industrial Rd. Frackville, PA 17931	Stoney Cr.	Schuylkill CD (570) 622-3742
Luzerne County Hanover Township	PAR10R184	Mericle Properties (Han. Ind.—Lot 10) 600 Baltimore Dr. Wilkes-Barre, PA 18702	Unnamed Trib. to Warrior Cr.	Luzerne CD (570) 674-7991
Luzerne County Dupont Borough	PAR10R183	William S. Gilchrist (Petro Stopping Center) 98 Grove St. Dupont, PA 18641	Mill Creek	Luzerne CD (570) 674-7991
Butler County Jackson Township	PAR10E117	Freight Transfer Service Station & Maintenance Shop A. Duie Pyle, Inc. 650 Whites Town Road West Chester, PA 19381	Breakneck Creek	Butler Conservation Dist. 122 McCune Drive Butler, PA 16001-65001 (724) 284-5270
Union County Kelly Township	PAR106836	Kelly Commons P. O. Box 46 Lewisburg, PA 17837	Unt. Susquehanna River	Union County CD 60 Bull Run Crossing Lewisburg, PA 17837 (570) 523-8782
Washington Township Franklin County	PAR-10-M183	Waynesboro Market Place Associates L. P. 1398 Logan Circle Marietta, GA 30062	Red Run	Franklin County CD 550 Cleveland Avenue Chambersburg, PA 17201 (717) 264-8074
Springettsbury Township York County	PAR-10-Y412	St. Onge Company Lot 1A St. Onge Company 1407 Williams Road York, PA 17402	Unt. to Mill Creek	York County CD 118 Pleasant Acres Rd. York, PA 17402 (717) 840-7430

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Chanceford Township York County	PAR-10-Y407	Rutter's Farm Store No. 24 CHR Corporation 2100 North George Street York, PA 17404	Toms Run	York County CD 118 Pleasant Acres Rd. York, PA 17402 (717) 840-7430
Spring Garden Township York County	PAR-10-Y416	Spring Garden Apartments York College of PA 439 Country Club Road York, PA 17405	Unt. to Codorus Creek	York County CD 118 Pleasant Acres Rd. York, PA 17402 (717) 840-7430
Stoney Run York County	PAR-10-Y400	Rosado & Hare Properties Carlos Rosado 126 North Fileys Road Dillsburg, PA 17019	Monaghan	York County CD 118 Pleasant Acres Rd. York, PA 17402 (717) 840-7430
Penn Township York County	PAR-10-Y410	Park Hills Elementary School South Western School District 225 Bowman Road Hanover, PA 17331-4297	Plum Creek	York County CD 118 Pleasant Acres Rd. York, PA 17402 (717) 840-7430
Warrington Township York County	PAR-10-Y362	Deer Run Robert Muller P. O. Box 75 Dillsburg, PA 17019	Unt. to Conewago Creek	York County CD 118 Pleasant Acres Rd. York, PA 17402 (717) 840-7430

General Permit Type—PAG-3

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Schuylkill County West Mahanoy Township	PAG052207	Jack Rich, Inc. 617 Altamont Boulevard Frackville, PA 17931	Tributary to Mud Run	Northeast Office 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Allegheny County Neville Township	PAR206125	AMG Resources Corporation 4100 Grand Avenue Pittsburgh, PA 15225	Ohio River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-4

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Knox Township Clarion County	PAG048618	Timothy S. and Rise L. Graham R. R. 1, Box 779 Lucinda, PA 16235	Step Creek	Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
West Salem Township Mercer County	PAG048628	Fred W. and Mary J. White	Unnamed Tributary to Big Run	Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
North Shenango Township Crawford County	PAG048625	David S. Graham 400 Ash Street Kane, PA 16735	Tributary Bennett Run	Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
<i>General Permit Type—PAG-5</i>				
<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Somerset County Somerset Borough	PAG056135	Somerset Fuel Co. P. O. Box 430 S. Kimberly Ave. Somerset, PA 15501	Coxes Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Washington County Peters Township	PAG056136	Guttman Oil Company 200 Speers Street Belle Vernon, PA 15012	UNT of Brush Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan approval granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

*Northwest Regional Office: Regional Water Management
Program Manager, 230 Chestnut Street, Meadville, PA
16335-3481, (814) 332-6942.*

West Fallowfield Township, Crawford County

*West Fallowfield Township, 6993 Westford Road,
Hartstown, PA 16131-0157.*

The purpose of this update is to change the location of the proposed sewage treatment facility to a site approximately 4,000 feet south of the formerly approved site near the Village of Hartstown. The proposed receiving stream is Patton Run.

The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drink- ing Water Act (35 P. S. §§ 721.1—721.17).

*Southcentral Regional Office: Sanitarian Regional
Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-
8200, (717) 705-4708.*

Permit No. 3899503. Public water supply, **Richland Borough**, Mill Creek Township, **Lebanon County**. *Responsible Official:* Dwight Belleman, Water Superintendent. *Type of Facility:* Construction and use of Well No. 6

as a source of supply. Water is to be disinfected using existing treatment facilities. *Consulting Engineer:* Jeffrey A. Warmkessel, Motley Engineering Co., Inc., 1300 New Holland Rd., Kenhorst, PA 19607. *Permit to Construct issued:* October 14, 1999.

*Regional Office: Northcentral Field Operations, Envi-
ronmental Program Manager, 208 West Third Street, Suite
101, Williamsport, PA 17701.*

Permit No. Minor Amendment. The Department issued a construction permit to **Beech Creek Borough Authority**, P. O. Box 216, Beech Creek, PA 16822, Beech Creek Borough, **Clinton County**, to replace the pump in Well No. 2, construct a new salt storage room at the treatment building, and construct a new system booster pump station at the treatment building.

*Southwest Regional Office: Regional Manager, Water
Supply Management, 400 Waterfront Drive, Pittsburgh, PA
15222-4745, (412) 442-4000.*

Permit No. 5699505-E. Public water supply. **Somerset Borough Municipal Authority**, 340 West Union Street, Somerset, PA 15501. *Type of Facility:* Emergency use of Walker Farm Wells. *Permit for Operation issued:* September 27, 1999.

Permit No. 3292501-A1. Public water supply. **Indiana County Municipal Services Authority**, P. O. Box 351, Indiana, PA 15701. *Type of Facility:* Hood School Road water storage tank and distribution lines. *Permit for Construction issued:* October 4, 1999.

Permit No. 2699501. Public water supply. **Pennsylvania American Water Company**, P. O. Box 1290, 300 Galley Road, McMurray, PA 15317. *Type of Facility:* Route 40 Chemical Feed Station. *Permit for Operation issued:* September 28, 1999.

Permit No. 2699502. Public water supply. **Indian Creek Valley Water Authority**, P. O. Box 486, Indian Head, PA 15446. *Type of Facility:* Law's Hill pump station and water storage tank. *Permit for Construction issued:* September 27, 1999.

Permit No. 0299506. Public water supply. **Harrison Township Municipal Authority**, 1705 Rear Freeport Road, Natrona Heights, PA 15065. *Type of Facility:* Liquid chemical feed system (Aqua-Mag). *Permit for Operation issued:* October 6, 1999.

Permit No. 0284505-A2. Public water supply. **Borough of Sewickley Water Authority**, P. O. Box 190, Sewickley, PA 15143. *Type of Facility:* Sewickley Reservoir No. 4 Cover. *Permit for Construction issued:* October 6, 1999.

HAZARDOUS SITES CLEANUP

Under the Act of October 18, 1988

Notice of Prompt Interim Response under the Hazardous Sites Cleanup Act

Bottle House Site

Allentown, Lehigh County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101–6020.1305) (HSCA), has initiated a prompt interim response at the Bottle House Site (site). This response has been undertaken under section 505(b) of HSCA. The site is located at 451 Front Street in the City of Allentown, Lehigh County, PA.

The site consists of a large three story brick building that was formerly the bottling house for the Neuweiler Brewery. The site is an industrial property that is located in a residential area. The site had been used by a tenant for the production and packaging of pesticides, herbicide, plasticizers and cleaning compounds from approximately 1989 to 1998. Currently stored in the abandoned building are approximately 2,000 55-gallon drums; numerous small (1 pint to 5 gallons) containers; five laboratories containing unidentified chemicals; various process mixing vats; numerous bags of chemicals; and 1-cubic yard containers containing plastic-like flakes and pellets.

To date, the Department has identified the following hazardous substances and/or contaminants at the site: ammonium hydroxide; hydrogen peroxide; liquid caustic soda; isocyanuric acid; organotin compounds; sulfonic acid (a.k.a. chlorosulfuric acid); sulfamic acid; piperonyl butoxide; sodium hypochlorites; chlorene tablets; hydrogen peroxide; hydrochloric acid; ethyl ether; various pesticides, herbicides and aldehydes; and various organic solvents, corrosives and oxidizers.

The objective of this prompt interim response action is to eliminate the immediate threat to human health and safety and the environment posed by the hazardous waste, hazardous substances and/or contaminants present on the site.

Given the specific circumstances at this site, the Department has determined that removal of hazardous substances to an approved offsite treatment/storage/disposal/recycling facility is the only viable alternative to implement at this site. This response action is needed in a prompt manner to protect human health and the environment.

On September 27, 1999, the Department mobilized an Interim Response Services contractor to the site to conduct preliminary activities necessary to identify and

characterize site materials. Removal of site wastes may be initiated prior to publication of this notice.

This notice is being provided under sections 505(b) and 506(b) of HSCA. The administrative record, which contains the information that forms the basis and documents the selection of this response action, is available for public review and comment. The administrative record is located at the DEP Bethlehem District Office at 4530 Bath Pike (Route 512) in Hanover Township, Northampton County and is available for review Monday through Friday from 8 a.m. to 4 p.m.

The administrative record will be open for comment from October 23, 1999, until January 24, 2000. Persons may submit written comments into the record during this time only, by sending them to Joseph Iannuzzo, DEP Project Officer, at the DEP Bethlehem Office at 4530 Bath Pike (Route 512) in Hanover Township, Northampton County or by delivering them to that office in person.

In addition, persons may present oral comments on the remedy selection for inclusion in the administrative record, at a public hearing. The Department has scheduled the hearing on December 7, 1999, at 1 p.m. at the Department's Bethlehem District Office at 4530 Bath Pike (Route 512) in Hanover Township, Northampton County. Persons wishing to present comments must register with Joseph Iannuzzo before November 30, 1999, (570) 826-2589 or in writing at the Department's Bethlehem District Office.

If no person registers to present oral comments by November 30, 1999, the hearing will not be held. Persons interested in finding out if anyone has registered, and if the hearing will be held, should contact Joseph Iannuzzo.

Persons with a disability who wish to attend the hearing and require auxiliary aid, service or other accommodations to participate in the proceedings, should contact Joseph Iannuzzo, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Public Notice of Proposed Consent Order and Agreement

Swissvale Auto Surplus Parts Site

Swissvale, Allegheny County

Under section 1113 of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. § 6020.1113) the Department of Environmental Protection (Department) has entered into a Consent Order and Agreement (CO&A) with Consolidation Coal Company, Dravo Corporation, Duquesne Light, USX Corporation and CBS Corporation f/k/a Westinghouse Electric Corporation (Consenting Parties) concerning the Swissvale Auto Surplus Parts site (site). The site is located in Swissvale, Allegheny County, PA. The site was utilized from the 1940s until 1984 as a scrap reclaiming facility and was last operated by a now defunct business called Swissvale Auto Surplus Parts.

During site operations, operators dismantled polychlorinated biphenyls (PCBs)—containing transformers at the site. Site operators recycled the transformers' copper windings and burned the PCBs-containing oils in an onsite incinerator. Those actions resulted in PCBs- and dioxin-contamination. From 1984 through 1987, the United States Environmental Protection Agency (EPA) conducted an emergency removal action at the site to remove drummed PCBs-waste and contaminated soils. The EPA's action was incomplete inasmuch as remaining onsite were a building, metal scrap and soils found to be

contaminated with PCBs. In May and June of 1999, in a prompt interim response under section 505(b) of HSCA (35 P.S. § 6020.505(b)), the Department removed all remaining contaminated materials and, in doing so, incurred approximately \$500,000 in costs.

In comparison to other hazardous substances contributed to the site by known and financially viable persons, the amounts of the hazardous substances the Department has determined are associated with the Consenting Parties, as well as the toxic or other hazardous effects of those substances, are minimal. The Department has therefore determined that the Consenting Parties are de minimis settlers. The Department has agreed to enter into a de minimis financial settlement with the Consenting Parties providing for an in-kind contribution by USX Corporation and a collective payment of \$118,750 by the other Consenting Parties to the Hazardous Sites Cleanup Fund. The specifics of the settlement are set forth in the CO&A.

The Department will receive and consider comments relating to the CO&A for 60 days from the date of this public notice. The Department may withdraw its consent to the settlement with the Consenting Parties if the comments concerning the CO&A disclose facts or issues which indicate that the settlement is impracticable or not in the public interest. After the public comment period, the Department's settlement with the Consenting Parties shall become final upon the Department's filing of a response to any significant comments made to the CO&A.

Copies of the Consent Order and Agreement are available for review and comment at the Department's Southwest Regional Office, located at 400 Waterfront Drive, Pittsburgh, PA. Comments may be submitted in writing to Gary Mechtly, Project Officer, Department of Environmental Protection, Hazardous Sites Cleanup Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. A copy of the Consent Order and Agreement or further information may be obtained by contacting Gary Mechtly at (412) 442-4201. TDD users may contact the Department through the Pennsylvania Relay Service at (800) 645-5984.

Public Notice of Proposed Consent Order and Agreement

Fair Oaks Dump Site

Leet Township, Allegheny County

Under section 1113 of the Hazardous Sites Cleanup Act (HSCA) (35 P.S. § 6020.1113), the Department of Environmental Protection (Department) entered into a Consent Order and Agreement (CO&A) with Robertson CECO Corporation (RCC) concerning the Fair Oaks Dump site (site). The site is located in Leet Township, Allegheny County, PA.

During the late 1940s and through the early 1950s, waste was trucked to the top of a ravine located at the site and tail-end dumped over the hillside. The Department investigated site conditions and determined that waste at the site should be removed and disposed of properly to protect the public and the environment.

After extensive negotiation between the Department and RCC, the parties agreed that RCC shall conduct a site investigation and shall conduct a cleanup of site waste in the form of proper disposal at Department-approved disposal facilities. In turn, given the possibility of some portion of site waste being orphan (that is, of unknown origin), the Department agreed to subsidize a portion of the site's investigation and cleanup costs.

The Department will receive and consider comments relating to the CO&A for 60 days from the date of this public notice. The Department may withdraw its consent to the settlement with RCC if the comments concerning the CO&A disclose facts or issues which indicate that the settlement is impracticable or not in the public interest. After the public comment period, the Department's settlement with RCC shall become final upon the Department's filing of a response to any significant comments made to the CO&A.

Copies of the CO&A are available for review and comment at the Department's Southwest Regional Office, located at 400 Waterfront Drive, Pittsburgh, PA. Comments may be submitted in writing to Jeffrey J. Jones, Project Officer, Department of Environmental Protection, Hazardous Sites Cleanup Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. A copy of the Consent Order and Agreement or further information may be obtained by contacting Jeffrey Jones at (412) 442-4142. TDD users may contact the Department through the Pennsylvania Relay Service at (800) 645-5984.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 2

The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed, and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected.

For further information concerning the final report, contact the Environmental Cleanup Program Manager in the Department's Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

Southeast Regional Office: Environmental Cleanup Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

Ashbourne Cleaners Site, Cheltenham Township, **Montgomery County**. Gregory S. Van Hook, Millennium Environmental Group, 6205 Easton Road, Pipersville, PA 18947, has submitted a Remedial Investigation/Final Report concerning remediation of site groundwater contami-

nated with solvents. The report is intended to document remediation of the site to meet site-specific standards.

Former Service Station—102 Bala Avenue, Lower Merion Township, **Montgomery County**. Christopher Orzechowski, RT Environmental Services, Inc., 215 W. Church Road, King of Prussia, PA 19406, has submitted a Final Report concerning remediation of site soil contaminated with lead, solvents and polycyclic aromatic hydrocarbons. The report is intended to document remediation of the site to meet the Statewide health standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908) and Chapter 250 Administration of Land Recycling Program.

Provisions of 25 Pa. Code § 250.8 Administration of Land Recycling Program requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Land Recycling and Environmental Remediation Standards Act (act). Plans and reports required by provisions of Act 2 for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of reuse of the property, and in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and report, please contact the Environmental Cleanup Program in the Department's Regional Office under which the notice of the plan or report appears. If information concerning a plan or report is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has acted upon the following plans and reports:

Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

U. S. Plywood Corp. Facility (Former), City of Philadelphia, **Philadelphia County**. Eugene A. Belli, ENSR, 2005 Cabot Blvd., West Langhorne, PA 19047, has submitted a Baseline Remedial Investigation Work Plan concerning remediation of site soil contaminated with PCBs, lead, heavy metals, pesticides, solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons and groundwater contaminated with lead, heavy metals, solvents, BTEX and polycyclic aromatic hydrocarbons. The Work Plan was approved by the Department on May 27, 1999.

Devitts Hardware Store (Former), City of Coatesville, **Chester County**. Ana Maria Caram, Senior Environmental Engineer, Bethlehem Steel Corp., 1170 Eighth Avenue, Bethlehem, PA 18016-7699, has submitted a Baseline Remedial Investigation Work Plan concerning remediation of site soil and groundwater contaminated with BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The Work Plan was approved by the Department on August 10, 1999.

Cimeo Tract, Sadsbury Township, **Chester County**. Steven L. Tanen, P.G., HydroScience, Inc., Center City Executive Centre, 607 Washington Street, Reading, PA 19601, has submitted a Final Report concerning remediation of site soil contaminated with heavy metals. The Final Report demonstrated attainment of Statewide health and site-specific standards and was approved by the Department on September 3, 1999.

Elf Atochem North America, Inc.—Technical Center, Upper Merion Township, **Montgomery County**. Mark Piazza, Elf Atochem North America, Inc., 2000 Market Street, Philadelphia, PA 19103, has submitted a Final Report concerning remediation of site soil contaminated with PCBs, lead, heavy metals, pesticides, solvents, BTEX and polycyclic aromatic hydrocarbons. The Final Report demonstrated attainment of the Statewide health standard and was approved by the Department on September 10, 1999.

Van Waters and Rogers, Inc., City of Philadelphia, **Philadelphia County**. Anthony J. Pirelli, Van Waters and Rogers, Inc., W205 N6849 Woodward Court, Menomonee Falls, WI 53051, has submitted a Remedial Investigation/Final Report concerning remediation of site soil and groundwater contaminated with solvents and BTEX. The Report demonstrated attainment of Statewide health and site-specific standards and was approved by the Department on September 15, 1999.

Unisys Downingtown Facility (Former), Downingtown Borough, **Chester County**. Randy L. Shuler, Environmental Resources Management, Princeton Crossroads, 250 Phillips Blvd., Suite 280, Ewing, NJ 08618, has submitted a Remedial Investigation Report, Risk Assessment Report and Cleanup Plan concerning remediation of site soil and groundwater contaminated with heavy metals and solvents. The Reports and the Cleanup Plan were approved by the Department on September 23, 1999.

Clinton Garage, City of Philadelphia, **Philadelphia County**. David Stockar, P.G., Versar, Inc., 1900 Frost Road, Suite 110, Bristol, PA 19007, has submitted a Final Report concerning remediation of site soil contaminated with lead, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The Report demonstrated attainment of the Statewide health standard and was approved by the Department on September 24, 1999.

Mad Platter, West Chester Borough, **Chester County**. Mark Fortna, DelVal Soil & Environmental Consultants, Inc., 4050 Skyron Drive, Suite A1,

Doylestown, PA 18901, has submitted a Final Report concerning remediation of site soil contaminated with polycyclic aromatic hydrocarbons. The Report demonstrated attainment of the Statewide health standard and was approved by the Department on September 27, 1999.

Northeast Regional Field Office: Joseph Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Easton Roundhouse Site, City of Easton, Northampton County. As part of the Department of Environmental Protection's Key Sites Initiative program, a Baseline Environmental Report was submitted on behalf of the City of Easton, One South Third Street, Easton, PA 18042, concerning the characterization of site soils and groundwater found to have been contaminated with petroleum hydrocarbons, solvents, metals, pesticides and BTEX (benzene, toluene, ethylbenzene and xylenes) compounds. The Baseline Environmental Report demonstrated attainment of the Special Industrial Area standard and was approved on October 6, 1999.

SOLID AND HAZARDOUS WASTE

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permits issued under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.

Regional Office: Regional Solid Waste Manager, Lee Park, 555 North Lane, Suite 6010, Conshohocken, PA 19428.

Permit No. 101069. Southeastern Chester County Refuse Authority, P. O. Box 221, Kennett Square, PA 19348, was issued a 10-year renewal permit for their municipal waste landfill located in London Grove Township, **Chester County.** Permit was renewed by the Southeast Regional Office on October 5, 1999.

Southcentral Regional Office: Regional Solid Waste Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4706.

Permit No. 300620. Williamsburg Generating Station, Sithe Pennsylvania Holding LLC, (450 Lexington Avenue, 37th Floor, New York, NY 10017). Application for permit reissuance of a residual waste landfill for a site in Catherine Township, **Blair County.** Permit issued in the Regional Office September 30, 1999.

Closure plan approved under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and regulations for closure of a solid waste disposal area or site.

Northeast Regional Office: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511

Permit I. D. No. 300693. Hercules Cement Company Landfill, Hercules Cement Company, 501 Center Street, P. O. Box 69, Stockertown, PA 18083. A Closure Plan Approval for this CKD Residual Waste Landfill, located in Upper Nazareth Township, **Northampton County.** The Closure Plan Approval was granted in the Regional Office on September 15, 1999.

AIR QUALITY OPERATING PERMITS

General Plan Approval and Operating Permit issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

GP3-31-03002: New Enterprise Stone and Lime C., Inc. (P. O. Box 77, New Enterprise, PA 16664), for operation of a portable nonmetallic mineral processing plant in Spruce Creek Township, **Huntingdon County.**

Operating Permits issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

01-310-052: Carmeuse Pennsylvania, Inc. (875 Oxford Road, Hanover, PA 17331), on October 4, 1999, for operation of a silo and truck loadout controlled by a fabric filter in Oxford Township, **Adams County.**

05-310-016: New Enterprise Stone and Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664), on October 1, 1999, for operation of a portable limestone crushing plant-wash plant controlled by wet suppression at the Ashcom Quarry in Snake Spring Valley Township, **Bedford County.** This source is subject to 40 CFR Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

06-05037: McConway and Torley Corp. (230 Railroad Street, Kutztown, PA 19530), on October 1, 1999, for operation of nine fabric collectors at the Kutztown Foundry in Kutztown Borough, **Berks County.**

06-301-090A: Bridgeview, Inc. (P. O. Box 364, R. D. 1, Morgantown, PA 19543), on October 6, 1999, for operation of an incinerator at the Morgantown Plant in Robeson Township, **Berks County.**

06-301-091: Bridgeview, Inc. (P. O. Box 364, R. D. 1, Morgantown, PA 19543), on October 6, 1999, for operation of an incinerator at the Morgantown Plant in Robeson Township, **Berks County.**

06-301-093A: Bridgeview, Inc. (P. O. Box 364, R. D. 1, Morgantown, PA 19543), on October 6, 1999, for operation of an incinerator with secondary chamber at the Morgantown Plant in Robeson Township, **Berks County.**

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

AR-03-023: West Penn Power, Armstrong Station (800 Cabin Hill Drive, Greensburg, PA 15601), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for two coal-fired boilers in Washington Township, **Armstrong County.**

AR-03-027: Keystone Owners Group, Keystone Station (1001 Broad Street, Johnstown, PA 15907), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for two coal fired boilers in Plumcreek Township, **Armstrong County.**

AR-04-235, Pennsylvania Power, Bruce Mansfield Station (P. O. Box 128, Shippingport, PA 15077), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for three coal-fired boilers in Shippingport Borough, **Beaver County**.

AR-04-044: Zinc Corp. of America, G. F. Wheaton Station (300 Frankfort Road, Monaca, PA 15061), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for two coal-fired boilers in Potter Township, **Beaver County**.

AR-30-099: West Penn Power, Hatfield's Ferry Station (800 Cabin Hill Drive, Greensburg, PA 15601), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for three coal-fired boilers in Monongahela Township, **Greene County**.

AR-32-040: Sithe Pennsylvania Holdings, LLC, Seward Station (1001 Broad Street, Johnstown, PA 15907), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for three coal-fired boilers in East Wheatfield Township, **Indiana County**.

AR-32-055: Edison Mission Energy, Homer City Station (18101 Von Karman Avenue, Suite 1700, Irvine, CA 92715), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for three coal-fired boilers in Center Township, **Indiana County**.

AR-32-059: Conemaugh Owners Group, Cone-maugh Station (1001 Broad Street, Johnstown, PA 15907), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for two coal-fired boilers in West Wheatfield Township, **Indiana County**.

AR-63-014: Duquesne Light, Elrama Station (411 Seventh Avenue, Pittsburgh, PA 15230), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain), for four coal-fired boilers in Union Township, **Washington County**.

AR-63-016: West Penn Power, Mitchell Station (800 Cabin Hill Drive, Greensburg, PA 15601), reopened on October 1, 1999, in accordance with 40 CFR 72.85, to include NOx allowances (Acid Rain) for four coal-fired boilers in Union Township, **Washington County**.

Administrative Amendment of Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.

OP-15-0017: Transcontinental Gas Pipeline Corp. (Station 200 60 Bacton Hill Road, Frazer, PA 19355), on October 5, 1999, for Facility VOCs/NOx RACT in East Whiteland Township, **Chester County**.

PLAN APPROVALS

Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.

PA-46-0155C: Sermatech International, Inc. (155 South Limerick Road, Limerick, PA 19468), on September 27, 1999, for operation of a binder mix tank in Limerick Township, **Montgomery County**.

PA-46-0155B: Sermatech International, Inc. (155 South Limerick Road, Limerick, PA 19468), on September 27, 1999, for operation of a thermal spray unit in Limerick Township, **Montgomery County**.

PA-46-0169A: H & N Packaging, Inc. (92 County Line Road, Colmar, PA 18915), on October 5, 1999, for operation of an ink room in Hatfield Township, **Montgomery County**.

PA-09-0117: Heucotech LTD (99 Newbold Road, Fairless Hills, PA 19030), on October 5, 1999, for operation of additional process equipment in Falls Township, **Bucks County**.

PA-15-0013A: Graphic Packaging Corp. (2400 Continental Boulevard, Malvern, PA 19355), on October 6, 1999, for operation of a flexographic/gravure press in Tredyffrin Township, **Chester County**.

PA-23-0016: PQ Corp. (1201 West Front Street, Chester, PA 19013), on October 8, 1999, for operation of an alternative opacity limit/furnace in City of Chester, **Delaware County**.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

01-318-009D: Aristokraft, Inc. (P. O. Box 5, Littlestown, PA 17340), on October 1, 1999, for construction of two sealer booths at 80 Keystone Street in Littlestown Borough, **Adams County**.

28-05022: RJC Industries, Inc. (5171 Innovation Way, Chambersburg, PA 17201), on October 6, 1999, for construction of two spray paint booths controlled by dry panel filters located at the Letterkenny Industrial Park, Building 7 in Greene Township, **Franklin County**.

67-05026B: DONSCO, Inc. (P. O. Box 2001, Wrightsville, PA 17368-0040), on October 4, 1999, for installation of a blast-cleaning machine controlled by a fabric filter at the Wrightsville Foundry in Wrightsville Borough, **York County**.

PA-36-05086B: DONSCO, Inc. (P. O. Box 2001, Wrightsville, PA 17368-0040), on October 8, 1999, for installation of a cold-box core machine at the Mount Joy Foundry in Mount Joy Borough, **Lancaster County**.

Minor Modification of Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

08-316-013A: Masonite Corp. (P. O. Box 311, Towanda, PA 18848), on October 4, 1999, to authorize use of an alternate zinc borate addition system in Wysox Township, **Bradford County**.

Plan Approvals extensions issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.

09-302-065A: Rohm & Haas Co. (Rte 413 & Old Route 13, Bristol, PA 19007), on October 5, 1999, for operation of two boilers to amend waste in Bristol Township, **Bucks County**.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

36-05067A: C & D Technologies, Inc. (82 East Main Street, Leola, PA 17540), on October 1, 1999, to authorize temporary operation of a lead-acid battery manufacturing plant, covered under this Plan Approval until January 29, 2000, on Route 23 in Upper Leacock Township, **Lancaster County**. This source is subject to 40 CFR, Part 60, Subpart KK—Standards of Performance for New Stationary Sources.

MINING

APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Act (52 P.S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Quality Control Act (35 P.S. §§ 4401—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.

Coal Applications Issued

56980105. Permit revision. **Dunamis Resources, Inc.** (One Energy Place, Suite 4000, Latrobe, PA 15650), to conduct auger mining activities on this bituminous strip mine in Lincoln Township, **Somerset County**, affecting 93.0 acres, receiving stream UNTs to North Branch of Quemahoning Creek and unnamed tributaries to Horner Run, application received August 9, 1999, issued October 5, 1999.

Knox District Office, P. O. Box 669, Knox, PA 16232.

33813020. John R. Yenzi, Jr. (P. O. Box 287, Anita, PA 15711). Revision to an existing bituminous strip operation to add Coal Ash Placement in Winslow Township, **Jefferson County** affecting 270 acres. Receiving streams: two unnamed tributaries to Front Run, Unnamed tributary to Trout Run. Application received: February 26, 1999. Permit issued: September 30, 1999.

33803012. Starr Coal Company (P. O. Box 245, Brockport, PA 15823) Renewal of an existing bituminous strip and auger operation in Washington Township, **Jefferson County** affecting 94.3 acres. This renewal is issued for reclamation only. Receiving streams: Rattlesnake Run. Application received: July 23, 1999. Permit issued: August 23, 1999.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

03990104. Reichard Contracting, Inc. (R. D. 3, New Bethlehem, PA 16242). Permit issued for commencement, operation and reclamation of a bituminous surface mine/coal preparation-processing facility located in Wayne Township, **Armstrong County**, affecting 11.1 acres. Receiving streams: unnamed tributary to Glade Run to Glade Run to Mahoning Creek to Allegheny River. Application received: June 18, 1999. Permit issued: October 4, 1999.

McMurray District Office, 3913 Washington Road, McMurray, PA 15317

30960701. Cyprus Emerald Resources, Inc. (145 Elm Dr., Waynesburg, PA 15370), to operate the Emerald No. 1/CRDA No. 2 in Franklin Township, **Greene County**, unnamed tributary to Smith Creek. Permit issued September 29, 1999.

30841314. Eberhart Coal Co. (R. R. 2, Box 114, Smithfield, PA 15478), to renew the permit for the Titus Mine in Dunkard Township, **Greene County**, no additional discharges. Permit issued October 1, 1999.

03921602. Glacial Sand & Gravel Co. (P. O. Box 1022, Kittanning, PA 16201-5022), to renew the permit for the Glacial Coal Tipple in East Franklin Township, **Armstrong County**, no additional discharges. Permit issued October 1, 1999.

30841317. Consol PA Coal Co. (P. O. Box 174, Graysville, PA 15337), to revise the permit for the Enlow Fork Mine in East Finley Township, **Washington County**, to install air shaft and future portal site (3 North No. 2 Airshaft), Rocky Run. Permit issued October 1, 1999.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Noncoal Permits Issued

40960304T. Pacton Corporation (46 Public Square, Suite 600, Wilkes-Barre, PA 18701), transfer of an existing quarry operation in Plains Township, **Luzerne County** affecting 72.0 acres, receiving stream—none. Transfer issued October 6, 1999.

Small Noncoal (Industrial Mineral) Permits Issued

58990818. Larry A. Lee (R. R. 2, Box 2642, Nicholson, PA 18446), commencement, operation and restoration of a bluestone quarry operation in Brooklyn Township, **Susquehanna County** affecting 1.0 acre, receiving stream—none. Permit issued October 7, 1999.

ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT ENCROACHMENTS

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval, and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514), and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984.

Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rule of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); section 302 of the Flood Plain Management Act (32 P. S. § 679.302); and sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)). (Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)

Southeast Regional Office, Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E09-771. Encroachment. **Department of Conservation and Natural Resources**, Bureau of State Parks, 400 Rachel Carson State Office Building, Harrisburg, PA 17105-8451. To construct and maintain two picnic areas (Virginia Forrest and Teddy Roosevelt Day-Use Areas) in and along the 100-year floodplain of the Delaware River and adjacent to the Pennsylvania Canal (AKA Delaware Canal). A de minimis amount of wetland (0.03 acre) will be affected by the proposed activities. The proposed work for each picnic area will include: 1. The construction of 100 linear feet of access road at both areas. 2. The construction of a paved parking area. 3. The construction of a well and water supply system. 4. The construction of a wastewater treatment system and associated comfort facilities. 5. The construction of river access trails.

The Virginia Forrest Day-Use Area is located 5,600 feet west of the intersection of Cuttalus Road and SR 32 (Lumberville, PA-NJ Quadrangle N: 5.75 inches; W: 0.55 inch) in Solebury Township, **Bucks County**.

The Teddy Roosevelt Day-Use Area is located along the Delaware Canal approximately 3,000 feet south of the intersection of Hellertown Road and Route 611 (Easton, NJ-PA Quadrangle N: 0.4 inch; W: 9.2 inches) in Williams Township, **Northampton County**.

E23-386. Encroachment. **City of Philadelphia**, Division of Aviation Terminal E, Philadelphia International Airport, Philadelphia, PA 19153. To place fill in 1.88 acres of wetland (PEM) associated with the construction of a new international terminal one in the 100-year floodplain of the Delaware River, located at the Philadelphia International Airport (Bridgeport, PA-NJ USGS Quadrangle N: 22.5 inches; W: 0.2 inch) in Tinicum Township, **Delaware County**. This application proposes 2.36 acres of replacement wetlands.

E46-843. Encroachment. **Klein Company**, 1700 Market Street, Suite 2600, Philadelphia, PA 19103. To replace and maintain 640 linear feet (noncontinuous) of existing gabion mats with cable concrete mats and to perform associated grading work in and along Indian Creek, located approximately 2,000 feet northeast of the intersection of Egypt Road and Trooper Road (PA Route 363) at the Willowbrook Apartment site (Collegeville, PA Quad-

range N: 1.4 inches; W: 2.85 inches) in West Norriton Township, **Montgomery County**. This permit was issued under § 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

E46-845. Encroachment. **Abington Township**, 1176 Old York Road, Abington, PA 19001.

To perform the following activities associated with the Baeder Run Flood Control Project:

1. To install and maintain 455 linear feet of 9-foot by 4-foot reinforced concrete box stream enclosure along Baeder Run (WWF). This structure will be installed adjacent to an existing 5.5-foot diameter reinforced concrete enclosure to increase the hydraulic conveyance capacity.

2. To widen and maintain a 1,100 linear foot section of Baeder Run. The total width of the proposed channel will be about 18 feet between the downstream terminus of the aforementioned culvert and Wanamaker Road (average width increase is 7 feet).

3. To construct and maintain a reinforced modular block retaining wall along the streambank where the widening will occur.

The project is located (Germantown, PA Quadrangle N: 19.9 inches; W: 0.9 inch) in Abington Township, **Montgomery County**.

Northeast Regional Office, Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

E35-313. Encroachment. **Karl J. Kincel, III**, 1431 Thomas Drive, Dunmore, PA 18512. To construct and maintain a single span, steel I-beam bridge, having a span of 25-feet and an underclearance of 6-feet across a Tributary to Gardner Creek. The project will provide access to a single residential dwelling and is located on the south side of T-383, approximately 0.2 mile east of the intersection of T-382 and T-383 (Ransom, PA Quadrangle N: 14.6 inches; W: 1.9 inches) in Newton Township, **Lackawanna County**.

Northcentral Region, Water Management—Soils and Waterways, F. Alan Sever, Chief, 208 West Third St., Williamsport, PA 17701.

E14-350. Encroachment. **Richard Wamsher**, 23 Eagle Lane, Reading, PA 19607. To construct, operate and maintain a water intake structure in the channel of an unnamed tributary to Big Poe Creek for the supply of water to an earthen embankment pond. The water intake shall be constructed with a 4-inch diameter pipe. The project is located along the northern right-of-way of SR 0322 approximately 400 feet east of Millheim Pike and Big Poe Valley Road intersection (Spring Mills, PA Quadrangle N: 10.9 inches; W: 1.9 inches) in Penn Township, **Centre County**. The water intake structure shall be constructed in the dry by installing sandbags; plastic dams and/or pipes to convey stream flow around the work area. This permit was issued under § 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E17-328. Encroachment. **Huston Township Supervisors**, P. O. Box 38, Penfield, PA 15849. To rehabilitate and stabilize approximately 400 feet of stream bank along Bennett Branch, Sinnemahoning Creek located next to Diamond Road about 2,000 feet from SR 255 (Pennfield, PA Quadrangle N: 12.2 inches; W: 14.0 inches) in Huston Township, **Clearfield County**. This permit was issued

under § 105.13(e) "Small Projects." This permit also include 401 Water Quality Certification.

E41-450. Encroachment. Pennsylvania Department of Transportation, P. O. Box 218, Montoursville, PA 17754-0218. To remove the existing structure and to construct and maintain a single span concrete box beam bridge with a normal span of 35 feet and an underclearance of 3.9 feet across an unnamed tributary to Blockhouse Creek on SR 1009, Section 003 about 700 feet south of SR 1011 (Liberty, PA Quadrangle N: 2.75 inches; W: 16.56 inches) in Jackson Township, **Lycoming County**.

E49-226. Encroachment. Pennsylvania Department of Transportation, P. O. Box 218, Montoursville, PA 17754-0218. To: 1) reconstruct and maintain the existing structure; and 2) construct and maintain, next to the existing structure, a dual ten span continuous composite steel multigirder bridge with nine 1.83-meter wide sharp-nosed piers, normal span to abutments measuring 39.32-meters, 2 @ 47.28-meters, 48.18-meters, 2 @ 47.28-meters, 48.18-meters, 2 @ 47.28-meters, 38.72-meters and a minimum underclearance of 15.11-meters across the West Branch of the Susquehanna River; 3) to construct and maintain, for a period of 3 years from the date of permit issuance, one of the two alternative causeways Alternative No. 1—a 15.25 meters (50 foot) wide clean stone causeway that extends across the West Branch Susquehanna River just upstream of the westbound bridge's piers with "fingers" extending downstream from the causeway, a top elevation of 135.03 meters (443 feet) and four temporary 16.15 meters (53 feet) long bridge spans; Causeway Alternative No. 2—a 15.25 meters (50 foot) wide clean stone causeway that extends across the West Branch Susquehanna River between the eastbound and westbound spans with "fingers" extending downstream and upstream from the causeway, a top elevation of 135.03 meters (443 feet) and four temporary 16.15 meters (53 feet) long bridge spans. The piers for both the westbound and eastbound spans will be accessed by "fingers" extending both upstream and downstream from the causeway; both of which are to be located 3,900 feet east of Exits 30 (Milton, PA Quadrangle, N: 9.10 inches; W: 15.44 inches) in Turbot Township, **Northumberland County** and White Deer Township, **Union County**; 4) to construct and maintain a dual four span concrete prestressed I-beam bridge with three 0.91-meter wide flat-nosed piers, normal span to abutments measuring 12.57-meters, 17.98-meters, 17.98-meters, 12.57-meters and a minimum underclearance of 8.10-meters across Muddy Run; plus to construct and maintain, for a period of 1 year from the date of permit issuance, six 1.83 meters (6 foot) diameter corrugated metal pipes with associated clean cover fill across Muddy Run; both of which are located 9,100 feet east of Exits 31 (Milton, PA Quadrangle N: 6.07 inches; W: 8.58 inches) in Turbot Township, **Northumberland County**.

E59-385 Denied. Encroachment. Mansfield University, Mansfield, PA 16933-1607. To construct and maintain a stormwater pipe arch outfall 44 inches by 72 inches by 50 feet in length to Corey Creek. The project is located approximately 150 feet north of Rt. 6 and 600 feet east of the Eastern Mansfield Borough boundary line (Mansfield, PA Quadrangle N: 10.6 inches; W: 9.1 inches) in Richmond Township, **Tioga County**.

EA53-001NC Issued. Encroachment. U. S. Fish & Wildlife Service, 315 South Allen St., State College, PA

16801. To construct cross vanes, single rock vanes, J-Hook rock vanes and natural material bank revetments on two reaches of Kettle Creek (EV) for the purpose of improving streambank stability, streambed stability and fish habitat. The stream reaches are approximately 2,660 feet and 900 feet in length and are located approximately 5 miles north of the village of Cross Fork and approximately 750 feet upstream from the SR 144 bridge near the village of Oleona (Short Run, PA Quadrangle N: 2.5 inches; W: 0.5 inches, and Oleona, PA Quadrangle N: 10.0 inches; W: 9.9 inches) in Stewardson Township, **Potter County**.

Northwest Regional Office, Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

E10-218. Encroachment. Philip Litwak, 100 Deniston Street No. 7, Pittsburgh, PA 15206. To provide after-the-fact authorization for excavation of approximately 1.03 acres of a wetland for the construction of the impoundment area of a nonjurisdictional dam at 1140 Branchton Road approximately 3,000 feet southeast of the intersection of S. R. 4010, Atwell Road and Harrisville Road (West Sunbury, PA Quadrangle N: 15.6 inches; W: 4.7 inches) located in Cherry Township, **Butler County**. Project includes restoration of 0.05 acre of impacted wetland and construction of 2.2 acres of replacement wetlands.

E10-305. Encroachment. Penreco, 138 Petrolia Street, Karns City, PA 16041-9299. To install two 2-inch-diameter aerial oil pipelines and to modify and maintain existing aerial pipelines and support structure across South Branch Bear Creek at the Bender Unit Area within the existing Karns City Penreco refinery (Chicora, PA Quadrangle N: 22.3 inches; W: 13.8 inches) located in Karns City Borough, **Butler County**.

E25-578. Encroachment. James P. Lay, 558 West 6th Street, Erie, PA 16507-1129. To extend and widen an existing concrete groin from 40 feet long by 4 feet wide to 70 feet long by 10 feet wide along the shore of Lake Erie approximately 1 mile west of the Presque Isle Peninsula in front of 3827 Lakefront Drive (Swanville, PA Quadrangle N: 18.4 inches; W: 6.6 inches) located in Millcreek Township, **Erie County**.

E25-582. Encroachment. National Fuel Gas Supply Corporation, 1100 State Street, Erie, PA 16501. To replace the 20-inch-diameter and 12-inch-diameter natural gas pipeline across French Creek approximately 1 mile upstream of the confluence of West Branch French Creek and to operate and maintain the 20-inch-diameter and 12-inch-diameter natural gas pipelines across French Creek (Wattsburg, PA-NY Quadrangle N: 0.65 inch; W: 6.0 inches) and across West Branch French Creek approximately 1 mile upstream of its mouth (Wattsburg, PA-NY Quadrangle N: 1.9 inches; W: 8.45 inches) located in Venango Township, **Erie County**.

E25-592. Encroachment. Franklin Township, 10411 Route 98, Edinboro, PA 16412. To remove the existing Falls Road Bridge No. 2 and to construct and maintain a prestressed concrete adjacent box beam bridge having a clear span of 28.5 feet and an underclearance of 14 feet across Falk Run on T-424 (Falls Road) at Howard Falls approximately 0.5 mile northwest of S. R. 98 (Edinboro North, PA Quadrangle N: 14.6 inches; W: 14.3 inches) located in Franklin Township, **Erie County**.

E37-125. Encroachment. PA Department of Transportation, District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017-2853. To remove the existing Seipel

Avenue Bridge and to construct and maintain a composite multigirder steel bridge having a clear, normal span of 195 feet and an underclearance of 36.5 feet across Connoquenessing Creek on S. R. 0488, Section L02 between Ellport and Wurttemberg (Beaver Falls, PA Quadrangle N: 19.6 inches; W: 1.1 inches) located in Ellport Borough, Wayne and Perry Townships, **Lawrence County**.

E37-126. Encroachment. **Kirk O'Neill**, R. R. 1, Box 232A, Enon Valley, PA 16120. To remove a temporary bridge constructed without a permit and to construct and maintain a three span steel beam bridge having concrete block abutments and timber decking with a clear center span of 54 feet and an underclearance of 14 feet across North Fork Little Beaver Creek on a private driveway extending north from Old Enon Unity Road approximately 0.75 mile west of S. R. 351 (New Galilee, PA Quadrangle N: 20.3 inches; W: 14.4 inches) located in Little Beaver Township, **Lawrence County**.

E42-264. Encroachment. **Smethport Borough Authority**, P. O. Box 152, Smethport, PA 16749. To construct and maintain the following improvements at the existing Smethport Borough Water Authority Wastewater Treatment Plant within the 100-year floodplain and floodway of Potato Creek along S. R. 46 approximately 2,000 feet north of S. R. 6 (Smethport, PA Quadrangle N: 11.8 inches; W: 7.4 inches) located in Smethport Borough, **McKean County**: 1. Expand the existing headworks and influent wetwell on the southwest side of the existing control building. 2. Construct a return sludge pump station, two final clarifiers and chlorine contact tank with associated fill northwest of the existing aeration tanks. 3. Construct a sludge storage tank and sludge dewatering building northwest of the existing control building. 4. Resurface existing service road, construct new paved driveways and concrete walkways.

E61-224. Encroachment. **Polk Borough**, P. O. Box 1037, Polk, PA 16342. To remove the existing bridge and to construct and maintain a composite prestressed concrete adjacent box beam bridge having a clear, normal span of 27 meters and an underclearance of 2.662 meters across Sandy Creek on Church Street approximately 150 meters south of S. R. 62 (Polk, PA Quadrangle N: 21.0 inches; W: 7.4 inches) located in Polk Borough, **Venango County**.

E61-225. Encroachment. **PA Department of Transportation, District 1-0**, 1140 Liberty Street, Franklin, PA 16323-1289. To remove the existing bridge and to construct and maintain a precast reinforced concrete box culvert having a 14-foot-wide by 4.25-foot-high waterway opening in Lick Run on S. R. 4006, Segment 0010, Offset 2270 approximately 2,500 feet east of S. R. 322 (Utica, PA Quadrangle N: 10.6 inches; W: 0.1 inch) located in Sugar Creek Borough, **Venango County**.

DAM SAFETY

Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); section 302 of the Flood Plain Management Act (32 P. S. § 679.302); and sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Central Office: Bureau of Waterways Engineering, 400 Market Street, 3rd Floor, P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.

D30-046. Dam. **Cyprus Emerald Resources Corporation** (145 Elm Drive, Waynesburg, PA 15370). To construct, operate and maintain the Emerald Mine Area No. 2 Coal Refuse Dam located across a tributary to Smith Creek in Franklin Township, **Greene County**.

D30-047. Dam. **Cyprus Emerald Resources Corporation** (145 Elm Drive, Waynesburg, PA 15370). To construct, operate and maintain Sedimentation Pond No. 1 Dam located across a tributary to Smith Creek in Franklin Township, **Greene County**.

ENVIRONMENTAL ASSESSMENT

Northcentral Region, Water Management—Soils and Waterways, F. Alan Sever, Chief, 208 West Third St., Williamsport, PA 17701.

EA18-001NC. Environmental Assessment. **Clinton County Commissioners**, Dan Vilello, Chairperson, Clinton County Courthouse, Lock Haven, PA 17745. To remove a three span concrete encased I-beam bridge with stone masonry piers and abutments. The demolition is necessary due to deterioration and will consist of removal of the superstructure and piers down to the streambed. The project is located on Township Road 551 over Young Womans Creek (HQ-CWF) approximately 0.2 mile from the intersection with SR 0120 (Renovo East PA Quadrangle N: 18 inches; W: 10.1 inches) in Chapman Township, **Clinton County** (Baltimore District, U. S. Army Corps of Engineers). Approval of an Environmental Assessment is requested in conjunction with § 105.12(a)(11), Dam Safety and Waterway Management regarding restoration activities.

Northwest Regional Office, Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

EA16-002NW. Environmental Assessment. **Hedin Environmental**, 195 Castle Shannon Boulevard, Pittsburgh, PA 15228. To construct and maintain a passive wetland treatment system to restore water quality from an acid mine seep discharge to Little Hefren Run (CWF). This system will include a 400-ton Anoxic Limestone Drain, a 4,000-square-foot settling pond, a 10,000-square-foot wetland, and a rock lined discharge channel to Little Hefren Run approximately 180 feet upstream of the confluence of Little Hefren Run and Toms Run. This project will also utilize a temporary road crossing of Toms Run (EV, stocked trout, wildtrout) with a bridge having a single span of 60 feet (bank to bank). The project is located approximately 500 feet northwest of the confluence of Little Hefren Run and Toms Run in Cooks Forest State Park (Cooksburg, PA Quadrangle N: 20.9 inches; W: 15.7 inches) located in Farmington Township, **Clarion County**.

EA61-002NW/WL6199601. Environmental Assessment. **Cornplanter Township**, R. R. 1, Box 98A, Oil City, PA 16301-9717. To request authorization under waiver of permit requirements in § 105.12(a)(11) to remove the superstructure of the abandoned old Rynd Farm Bridge across Cherrytree Run near its confluence with Oil Creek west of S. R. 8 (Oil City, PA Quadrangle N: 19.5 inches; W: 9.9 inches) located in Cornplanter Township, **Venango County**.

WATER ALLOCATIONS

Actions taken on applications filed under the act of June 24, 1939 (P. L. 842, No. 365) (32 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.

Northwest Regional Office, Regional Manager, Water Supply Management, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6899.

Permits Issued

Permit No. WA20-1000. Water Allocation. **Cambridge Township Municipal Authority**, 22530 Electric Drive, Cambridge Springs, PA 16403, grants the right to purchase 42,100 gpd based on a 30-day average from Cambridge Springs Borough. This permit request is to ensure an adequate water supply to customers in a section of Cambridge Township, **Crawford County**. Type of Facility: Township Municipal Authority, Bruce Patterson, Authority Engineer, Northwest Engineering, Inc., P. O. Box Q, Tidioute, PA 16351. Permit Issue Date: October 8, 1999.

SPECIAL NOTICES

The Pennsylvania Department of Environmental Protection (Department) has scheduled a public hearing to receive testimony and comments on the proposed 102 Individual NPDES permit for Stormwater Discharges from Construction Activities for Carlisle Evangelical Free Church in South Middleton Township, Cumberland County. Construction of the proposed project will result in a stormwater discharge to the Letort Spring Run. The Letort Spring Run is an EV (exceptional value) watershed. The hearing will be held on Wednesday, December 1, 1999, beginning at 7 p.m. at the Cumberland County Conservation District, 43 Brookwood Avenue, Suite 4, Carlisle, PA 17013.

Persons intending to testify at the hearing should register by Friday, November 12, 1999, by calling Karen Sitler, (717) 705-4904. If no person registers to present oral comments by November 12, the hearing will not be held. Finally, persons interested in finding out if any one has registered, and if the hearing will be held, should also contact Ms. Sitler at the same number.

All testimony should be to the point. Each individual will have up to 10 minutes for presentation. To ensure that all speakers have a fair and equal opportunity to present their testimony, relinquishing of time will be prohibited. Further details relating to the procedures to be followed at the hearing will be outlined at the beginning of the proceedings.

An appointment may be scheduled to review the permit application at the Southcentral Regional Office in Harrisburg by contacting Mary DiSanto at (717) 705-4732 between the hours of 8 a.m. and 4 p.m., Monday through Friday.

Persons with disability who wish to attend the hearing but require an auxiliary aid, service or other accommodations to participate in the proceedings should contact the Department for assistance. TDD users may use the AT&T Relay Service at (800) 654-5984.

[Pa.B. Doc. No. 99-1801. Filed for public inspection October 22, 1999, 9:00 a.m.]

Availability of Technical Guidance

Technical Guidance Documents are on DEP's World Wide Web site (www.dep.state.pa.us) at the Public Participation Center. The "1999 Inventory" heading is the Governor's List of Nonregulatory Documents. The "Search

the Inventory of Technical Guidance Documents" heading is a database of the Inventory. The "Final Documents" heading is the link to a menu of the various DEP bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to DEP's draft technical guidance documents.

DEP will continue to revise its documents, as necessary, throughout 1999.

Ordering Paper Copies of DEP Technical Guidance

Persons can order a bound paper copy of the latest Inventory or an unbound paper copy of any of the final documents listed on the Inventory by calling DEP at (717) 783-8727.

In addition, bound copies of some of DEP's documents are available as DEP publications. Please check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Here is the current list of recent changes. Persons who have any questions or comments about a particular document should call the contact person whose name and phone number is listed with each document. Persons who have questions or comments in general should call Joe Sieber at (717) 783-8727.

Final Guidance

DEP ID: 383-3310-609 Title: PADWIS Reporting Description: This document establishes uniform instructions and protocol for assessing and printing computerized inventory for public water systems in support of the Safe Drinking Water Program. Effective Date: October 23, 1999 Contact: Trudy Troutman at (717) 783-3795

Interim Guidance

DEP ID: 383-2131-001 Title: Screening Criteria on Water Quality/Quantity Impacts for Drinking Water Permits Description: The purpose of this guidance is to further DEP's policy with regard to the review and approval of safe drinking water permit applications for the development of new or expanded ground or surface sources of supply. Anticipated Effective Date: Upon publication in the *Pennsylvania Bulletin*. Comment Period Ends: November 22, 1999 Contact: Trudy Troutman at (717) 783-3795

Draft Guidance

DEP ID: 274-0300-003 Title: Continuous Emission Monitoring (CEM) Systems Description: This document is an internal procedural guide for Bureau and Regional personnel responsible for conducting quality assurance auditing activities on existing monitoring systems. As such, the document was developed by the Continuous Emission Monitoring Section to reflect existing quality assurance auditing procedural requirements. Anticipated Effective Date: Currently in use, but comments on guidance accepted until November 22, 1999 Comment Period Ends: November 22, 1999 Contact: Joseph C. Nazzaro at (717) 783-9247.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 99-1802. Filed for public inspection October 22, 1999, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Payments to Nursing Facilities; October 1, 1999 Proposed Rates

The purposes of this notice are to announce the proposed changes in payment rates for nursing facilities beginning October 1, 1999, and to identify the methodology and justification for these proposed rates. Under 42 U.S.C.A. § 1902(a)(13)(A), as amended by section 4711 of the Balanced Budget Act of 1997, P.L. 105-33, § 4711, a State must use a public process when it proposes to make changes in payment rates or payment methodologies for nursing facility services under its approved Title XIX State Plan. The Department of Public Welfare (Department) is not proposing to amend its State Plan or to change its regulations, 55 Pa. Code Chapter 1187, relating to the rate-setting methodology used to set nursing facility payment rates. Rather, the Department is proposing to make changes in its nursing facility payment rates because those rate changes are required by the rate-setting methodology contained in its approved State Plan and regulations.

Rates

The proposed October 1, 1999 rates are available through the Bulletin Board System (BBS) at (800) 833-5091, at the local County Assistance Offices throughout the Commonwealth, or by contacting Tom Jayson in the Policy Section of the Bureau of Long Term Care Programs at (717) 772-2570.

Methodology

The methodology that the Department used to set the proposed rates is contained in 55 Pa. Code Chapter 1187, Subchapter G (relating to rate setting) and the Commonwealth's approved Title XIX State Plan.

Justification

The justification for the proposed rates is that they were set under the rate-setting methodology required by the Commonwealth's approved State Plan and the current regulations.

The estimated increase in annual aggregate expenditures for Medical Assistance nursing facility services for FY 1999-2000 is \$9.313 million (\$4.302 million in State funds).

Interested persons are invited to submit written comments about the proposed rates to the Department within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Comments should be addressed to: Department of Public Welfare, Attention: Suzanne Love, Room 515 Health and Welfare Building, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Services by calling (800) 654-5984 (TDD Users) or (800) 654-5988 (Voice Users). Persons who require another alternative should contact Thomas Vracarich in the Office of Legal Counsel at (717) 783-2209.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-NOT-221. (1) General Fund; (2) Implementing Year 1999-00 is \$4.302 Million; (3) 1st Succeeding Year 2000-01 is \$4.928 Million; 2nd Succeeding Year 2001-02 is \$5.174 Million; 3rd Succeeding Year 2002-03 is \$5.433 Million; 4th Succeeding Year 2003-04 is \$5.704 Million; 5th Succeeding Year 2004-05 is \$5.990

Million; (4) 1998-99 Program—\$721.631 Million; 1997-98 Program—\$617.252 Million; 1996-97 Program—\$591.910 Million; (7) Medical Assistance—Long Term Care; (8) recommends adoption. There are funds available in the Department's budget to cover the cost of this increase.

[Pa.B. Doc. No. 99-1803. Filed for public inspection October 22, 1999, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Census 2000 Instant Lottery Game

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314), and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Census 2000.

2. *Price:* The price of a Pennsylvania Census 2000 instant lottery game ticket is \$1.00.

3. *Play Symbols:* Each Pennsylvania Census 2000 instant lottery game ticket will contain one play area. The play symbols and their captions located in the play area are: \$1⁰⁰ (ONE DOL), \$2⁰⁰ (TWO DOL), \$3⁰⁰ (THR DOL), \$5⁰⁰ (FIV DOL), \$7⁰⁰ (SVN DOL), \$10⁰⁰ (TEN DOL), \$20\$ (TWENTY), \$50\$ (FIFTY), \$100 (ONE HUN) and \$2,000 (TWO THO).

4. *Prizes:* The prizes that can be won in this game are \$1, \$2, \$3, \$5, \$7, \$10, \$20, \$50, \$100 and \$2,000.

5. *Approximate Number of Tickets Printed For the Game:* Approximately 6,720,000 tickets will be printed for the Pennsylvania Census 2000 instant lottery game.

Determination of Prize Winners:

(a) Holders of tickets with three matching play symbols of \$2,000 (TWO THO) in the play area on a single ticket, shall be entitled to a prize of \$2,000.

(b) Holders of tickets with three matching play symbols of \$100 (ONE HUN) in the play area on a single ticket, shall be entitled to a prize of \$100.

(c) Holders of tickets with three matching play symbols of \$50\$ (FIFTY) in the play area on a single ticket, shall be entitled to a prize of \$50.

(d) Holders of tickets with three matching play symbols of \$20\$ (TWENTY) in the play area on a single ticket, shall be entitled to a prize of \$20.

(e) Holders of tickets with three matching play symbols of \$10⁰⁰ (TEN DOL) in the play area on a single ticket, shall be entitled to a prize of \$10.

(f) Holders of tickets with three matching play symbols of \$7⁰⁰ (SVN DOL) in the play area on a single ticket, shall be entitled to a prize of \$7.

(g) Holders of tickets with three matching play symbols of \$5⁰⁰ (FIV DOL) in the play area on a single ticket, shall be entitled to a prize of \$5.

(h) Holders of tickets with three matching play symbols of \$3⁰⁰ (THR DOL) in the play area on a single ticket, shall be entitled to a prize of \$3.

(i) Holders of tickets with three matching play symbols of \$2.⁰⁰ (TWO DOL) in the play area on a single ticket, shall be entitled to a prize of \$2.

(j) Holders of tickets with three matching play symbols of \$1.⁰⁰ (ONE DOL) in the play area on a single ticket, shall be entitled to a prize of \$1.

Get	Win
3-\$1	\$1
3-\$2	\$2
3-\$3	\$3
3-\$5	\$5
3-\$7	\$7
3-\$10	\$10
3-\$20	\$20
3-\$50	\$50
3-\$100	\$100
3-\$2,000	\$2,000

8. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Census 2000 instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

9. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Census 2000, prize money from winning Pennsylvania Census 2000 instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Census 2000 instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

10. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

11. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Census 2000 or through normal communications methods.

ROBERT A. JUDGE, Sr.,
Secretary

[Pa.B. Doc. No. 99-1804. Filed for public inspection October 22, 1999, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Retention of Engineering Firms

Cambria County

Project Reference No. 08430AG2428

The Department will retain an engineering firm to provide preliminary engineering and environmental stud-

7. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

Approximate Odds	Approximate No. of Winners Per 6,720,000 Tickets
1:9.09	739,200
1:15	448,000
1:42.86	156,800
1:75	89,600
1:100	67,200
1:150	44,800
1:500	13,440
1:2,400	2,800
1:4,800	1,400
1:560,000	12

ies for S. R. 0056, Section 023 (West End Transportation Improvements) in the City of Johnstown, Lower Yoder and West Taylor Townships, Cambria County; Saint Clair Township, Village of Seward, Westmoreland County; and East Wheatfield Township, Borough of Armagh, Indiana County. The total estimated construction cost of the project is \$64 million.

This will be a one part Agreement. The selected firm will be required to provide the following engineering, design, and environmental services: need analysis, Phase 1 and Phase 2 alternatives analysis, EIS preparation, and preliminary engineering.

All engineering services for this project will be performed in accordance with the current Department metric Design Standards. English measurements will also be included.

The following factors, listed in order of importance, will be considered by the Department during evaluation of the firms submitting acceptable Letters of Interest:

a. Past performance of firm with respect to quality of work, administrative and cost controls, ability to meet schedules, and previous experience on similar engineering and environmental projects. The specific experiences of individuals who constitute the firm shall be considered.

b. Specialized experience and technical competence of firm.

c. Resumes of key personnel and listing of proposed subconsultants.

d. Relative size of firm to size of project to be completed under this contract.

e. Demonstrated capacity for the innovative engineering to resolve complex problems.

f. Geographic location of the consultant with respect to Engineering District 9-0.

The District will announce the shortlisted firms at an open public meeting to be held in Engineering District 9-0, 1620 N. Juniata Street, Hollidaysburg, PA 16648. All candidates that have submitted a Letter of Interest will be notified of the date. Specify a contact person in the Letter of Interest.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be ten (10%) percent

of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised project(s).

This project reference assignment is considered complex. The letter of interest shall be limited to a maximum of five (5) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. Include a copy of the conformation letter from the Department stating the consultant's current FAR overhead rate. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Earl L. Neiderhiser, P.E., District Engineer
Engineering District 9-0
1620 N. Juniata Street
Hollidaysburg, PA 16648
Attention: Mr. Joseph Reed

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Joseph Reed, District 9-0, at (814) 696-7179.

Lebanon County

Project Reference No. 08430AG2429

The Department will retain an engineering firm to provide environmental studies, preliminary engineering, final design, and construction consultation for S. R. 0081, Section 023, Interstate 81 reconstruction, in Union, Swatara, and Bethel Townships, Lebanon County. This project involves highway reconstruction and bridge rehabilitation from I-78 to Schuylkill County line for a total length of approximately 8.2 miles. The limits of work are from Segment 0880, Offset 0000 to Segment 0960, Offset 3968 and from Segment 0881, Offset 000 to Segment 0961, Offset 3912. The estimated project construction cost is \$37.5 million.

The required services will include: life cycle cost analysis/pavement survey report; field surveys; plotting of topography and cross sections; pavement and drainage design; highway signing updating; field views; safety review/Step 9 submission and presentation; value engineering submission; project team meetings; traffic control plans; structural rehabilitation design; erosion and sediment pollution control plans and narrative; utility and property involvement investigations; Route 72 Interchange traffic analysis and signals; preparation of environmental studies and documentation; interagency permits; construction plans specifications and estimates; and consultation during construction.

The following factors, listed in order of importance, will be considered by the Department during evaluation of the firms submitting acceptable letters of interest:

- a. Specialized experience and technical competence with similar Department projects especially interstate restoration projects and their ability to provide innovative solutions to complex technical problems, such as M & P of traffic and structures.
- b. Having the resources and ability to meet an accelerated schedule.
- c. Project team composition.
- d. Past performance.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be ten (10%) percent of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised project(s).

This project reference assignment is considered complex. The letter of interest shall be limited to a maximum of five (5) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Barry G. Hoffman, P.E., District Engineer
Engineering District 8-0
2140 Herr Street
Harrisburg, PA 17103-1699
Attention: Mr. John M. Bachman

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the sixth (6th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. John M. Bachman, District 8-0, at (717) 783-4519.

Butler County

Project Reference No. 08430AG2430

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately twenty (20) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services on S. R. 0079, Section 290, Cranberry Interchange/Turnpike Connector; Butler County.

This project involves the relocation and reconfiguration of the Cranberry Interchange (connecting the PA Turnpike with S. R. 0019) along with the construction of a new interchange on I-79 (I-79 Connector) at the border of Butler and Allegheny Counties, approximately fifteen (15) miles north of Pittsburgh in Cranberry and Marshall Townships. The project will provide a direct link between I-79 and the PA Turnpike when complete. The new I-79 interchange will require the relocation of the I-79 southbound lanes and conversion into a collector-distributor roadway along with replacement of the Freeport Road Structure. The I-79/S. R. 0228 partial interchange will also be completed to provide for full directional access to/from I-79.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- a. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized experience in the Maintenance and Protection of Traffic, soils, structures, concrete, asphalt paving, drainage, roadway and structural rehabilitation.

b. Understanding of Department's requirements, policies, and specifications.

c. Past performance.

d. Number of NICET certified inspectors in each payroll classification.

e. Number of available inspectors in each payroll classification.

f. Ability to provide CPM scheduling.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Manager 1 (TCM-1)	2 (2)
(NICET Highway Construction Level 4 or equivalent)	
Transportation Construction Ins. Super. (TCIS)	3 (3)
(NICET Highway Construction Level 3 or equivalent)	
Transportation Construction Inspector—Materials (TCI-Materials)	2 (1)
(NICET Highway Materials Level 2 or equivalent)	
Transportation Construction Inspector (TCI)	12 (6)
(NICET Highway Construction Level 2 or equivalent)	
Technical Assistant (TA)	1 (0)
(NICET Highway Construction Level 1 or equivalent)	

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.

2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCM-1)	\$46.27
(TCIS)	\$40.54
(TCI-Materials)	\$36.55
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item; provide certified CDS Operator and Nuclear Densometer Gage Licensed Operator and perform other duties as may be required.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

4	Nuclear densometer gages/license (at point of need)
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The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be ten percent (10%) of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information Section after the advertised project(s).

Letters of interest for this project must include a letter, signed by the individuals you propose for all TCM-1 and/or TCIS positions, giving their approval to use their name in your letter of interest for this specific project. The Technical Assistant(s) do(es) not need to be identified in the letter of interest.

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCM-1	3
TCIS	4
TCI-M	3
TCI	15

No resumes are required for the TA Classification.

This project reference assignment is considered complex. The letter of interest shall be limited to a maximum of five (5) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Richard H. Hogg, P.E., District Engineer
Engineering District 10-0
Route 286 South
P. O. Box 429
Indiana, PA 15701
Attention: Mr. George McAuley, P.E.

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. George McAuley, P.E., District 10-0, at (724) 357-2815 or Mr. Terry Miller, P.E., District 10-0, at (724) 357-2814.

General Requirements and Information

Firms interested in providing the above work and services are invited to submit a Letter of Interest with the required information for each Project Reference Number for which the applicant wishes to be considered.

The Letter of Interest and required information must be submitted to the person designated in the individual advertisement.

The Letter of Interest and required information must be received by the Deadline indicated in the individual advertisement.

All consultants, both prime consultants and subconsultants, who desire to be included in a Letter of Interest must have an Annual Qualification Package on file with the appropriate District Office, by the deadline stipulated in the individual advertisements.

For Statewide projects, all consultants, both prime consultants and subconsultants, who desire to be included in a Letter of Interest must have an Annual Qualification Package on file with the Central Office, Bureau of Design by the deadline stipulated in the individual advertisements.

By submitting a letter of interest for the projects that requests engineering services, the consulting firm is certifying that the firm is qualified to perform engineering services in accordance with the laws of the Commonwealth of Pennsylvania.

Information concerning the Annual Qualification Package can be found in Strike-off Letter No. 433-99-04 or under the Notice to all Consultants published in the February 27, 1999 issue of the *Pennsylvania Bulletin*.

The requirements for Letters of Interest, in addition to the requirements stipulated in the individual advertisement, are as follows:

1. The Letter of Interest must include the project reference number, the firm's legal name, and the firm's federal identification number.
2. Identify the project manager.
3. Identify subconsultants, if any, including DBE/WBE, if required.
4. Identify key project staff.

If a Joint Venture responds to a project advertisement, the Department of Transportation will not accept separate Letters of Interest from the Joint Venture constituents. A firm will not be permitted to submit a Letter of Interest on more than one (1) Joint Venture for the same Project Reference Number. Also a firm that responds to a project as a prime may not be included as a designated subcontractor to another firm that responds as a prime to the project. Multiple responses under any of the foregoing situations will cause the rejection of all responses of the firm or firms involved. The above does not preclude a firm from being set forth as a designated subcontractor to more than one (1) prime responding to the project advertisement.

If a goal for Disadvantaged Business Enterprise (DBE) participation is established for an advertised project, firms expressing interest in the project must agree to ensure that Disadvantaged Business Enterprise (DBE) firms as defined in the Transportation Equity Act for the 21st century (TEA-21) and currently certified by the Department of Transportation shall have the opportunity to participate in any subcontracting or furnishing supplies or services approved under Form 442, Section 1.10(a). The TEA-21 requires that firms owned and controlled by women (WBEs) be included, as a presumptive group, within the definition of Disadvantaged Business Enterprise (DBE). The goal for DBE participation shall be as stated in the individual project advertisement. Responding firms shall make good faith efforts to meet the DBE goal using DBEs (as they are defined prior to the act, WBEs or combinations thereof).

Proposing DBE firms must be certified at the time of submission of the Letter of Interest. If the selected firm fails to meet the established DBE participation goal, it shall be required to demonstrate its good faith efforts to attain the goal.

Responses are encouraged by small firms, Disadvantaged Business Enterprise (DBE) firms, and other firms who have not previously performed work for the Department of Transportation.

The assignment of the agreement/contract for the above advertisement(s) will be made to one of the firms who submitted an acceptable Letter of Interest in response to the project advertisement. The assignment will be made based on the Department's evaluation of the firm's qualification and capabilities. The Department reserves the right to reject all letters submitted, to cancel the solicitations requested under this Notice, and/or to readvertise solicitation for the work and services.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 99-1805. Filed for public inspection October 22, 1999, 9:00 a.m.]

FISH AND BOAT COMMISSION

Temporary Changes to Fishing Regulations at Leaser Lake, Lehigh County

The Executive Director of the Fish and Boat Commission (Commission), acting under the authority of 58 Pa. Code § 65.25 (relating to temporary changes to fishing regulations), is taking immediate action temporarily modify fishing regulations at Leaser Lake in Lehigh County. Specifically, the Executive Director is designating Leaser Lake as a "Panfish Enhancement Special Regulation" water to be regulated and managed under 58 Pa. Code § 65.11. This designation applies to sunfish, yellow perch and crappie at Leaser Lake, effective immediately. The Executive Director of the Commission finds that designating Leaser Lake as a "Panfish Enhancement Special Regulation" water and applying the regulation to these species is necessary and appropriate for the protec-

tion, preservation and management of fish and fish habitat and to conserve and preserve fishing opportunities.

PETER A. COLANGELO,
Executive Director

[Pa.B. Doc. No. 99-1806. Filed for public inspection October 22, 1999, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (act) (71 P. S. § 745.5(g)) provides that the designated standing committees may issue comments within 20 days of the close of the public comment period, and the Independent Regulatory Review Commission (Commission) may issue comments within 10 days of the close of the committee comment period. The Commission comments are based upon the criteria contained in section 5a(h) and (i) of the act (71 P. S. § 745.5a(h) and (i)).

The Commission has issued comments on the following proposed regulations. The agency must consider these comments in preparing the final-form regulation. The final-form regulations must be submitted by the dates indicated.

<i>Reg No.</i>	<i>Agency/Title</i>	<i>Issued</i>	<i>Final-Form Submission Deadline</i>
16A-414	State Architects Licensure Board Fees (29 Pa.B. 4170 (August 7, 1999))	10/7/99	9/07/01
16A-566	State Real Estate Commission Application Fees (29 Pa.B. 4171 (August 7, 1999))	10/7/99	9/07/01

State Architects Licensure Board Regulation No. 16A-414

Fees

October 7, 1999

We have reviewed this proposed regulation from the State Architects Licensure Board (Board) and submit for consideration the following objections and recommendations. Subsections 5.1(h) and (i) of the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to fiscal impact and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

Section 9.3. Fees.—Fiscal impact and Clarity

Administrative overhead costs

In the proposed regulation's Fee Report Forms, there are significant differences in the costs covered by different

fees except for "Administrative Overhead" costs. According to the Preamble, the Bureau of Professional and Occupational Affairs (BPOA) calculated the allocated share of overhead cost for each fee category by dividing total overhead costs by the number of active licensees. This method of overhead cost allocation is not unreasonable and has been consistently applied. On the other hand, the cost allocations are based on estimates of the actual time BPOA staff spends performing the tasks related to each fee.

For overhead cost allocations, there appears to be no relationship to the services covered by the fees or frequency of fee payments. Therefore, there is no indication that the fees will recover actual or projected overhead costs. In addition, the allocated costs are based on past expenditures rather than estimates or projections of future expenditures. There is no certainty that the fees' "projected revenues will meet or exceed projected expenditures" under section 11(a) of the Architects Licensure Law (63 P. S. § 34.11(a)).

We question the use of a constant overhead cost allocation that appears to be unrelated to the actual costs of activities covered by different fees. Even though this process was used to determine other fees, why should BPOA maintain this approach? The Board and BPOA should specifically identify the overhead costs, or portion of the total overhead, to be recouped by these fees, and review their method of allocating these overhead costs. Is it the Board's goal to allocate all overhead costs by category to each fee? If so, we do not believe the current allocation formula gives the desired result.

Differing overhead costs

The administrative overhead costs for all fees are \$17.78, except for the verification of licensure and certification of scores, or licensure, which is \$9.76. The Board should explain why the administrative costs for the verification of licensure and certification of scores, or licensure are different.

State Real Estate Commission Regulation No. 16A-566

Application Fees

October 7, 1999

We have reviewed this proposed regulation from the State Real Estate Commission (Commission) and submit for consideration the following objections and recommendations. Subsections 5.1(h) and (i) of the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to fiscal impact and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 39.72. Fees.—Fiscal impact and Clarity

Administrative overhead costs

In the proposed regulation's fee report forms, there are significant differences in the costs covered by different fees except for "Administrative Overhead" costs. According to staff at the Department of State and its Bureau of Professional and Occupational Affairs (BPOA), the allocated share of overhead cost for each fee category is calculated by dividing total overhead costs by the number of active licensees. This methodology for overhead cost allocation is not unreasonable and has been consistently applied. On the other hand, the staff cost allocations are

based on estimates of the actual time BPOA staff spends performing the tasks related to each fee.

For overhead cost allocations, there appears to be no relationship to the services covered by the fees or frequency of fee payments. Therefore, there is no indication that the fees will recover actual or projected overhead costs. In addition, the allocated costs are based on past expenditures rather than estimates or projections of future expenditures. Hence, there is no certainty that the fees' "projected revenues will meet or exceed projected expenditures" under section 407(a) of the Real Estate Licensing and Registration Act (63 P.S. § 455.407(a)).

We question the use of a constant overhead cost allocation that appears to be unrelated to the actual costs of activities covered by different fees. Even though this process was used to determine other fees, why should BPOA maintain this approach? The Commission and BPOA should specifically identify the overhead costs, or portion of the total overhead, to be recouped by these fees, and review their methodology for allocating these overhead costs. Is it the Commission's goal to allocate all overhead costs by category to each fee? If so, we do not believe the current allocation formula gives the desired result.

Differing overhead costs

The administrative overhead costs for all fees are \$13.56, except for the certification of history of licensure, registration or approval, which is \$9.76. The Commission should explain why the administrative cost for certification of history of licensure, registration or approval is different.

2. Section 35.203. Fees—Clarity.

Addition of satellite location or instructor for real estate school

This section lists the category "Addition of a satellite location or instructor for real estate school." The existing regulation includes "course" in this category. The proposed regulation lists "Addition of course for real estate school" as a separate category. As published in the *Pennsylvania Bulletin*, a comma that should have been shown as a deletion was inadvertently omitted. Therefore, the final regulation should be revised to read as follows: "Addition of satellite location[, course] or instructor for real estate school."

Certification of history of licensure, registration or approval

This category of fees is included in the regulation. However, the accompanying fee report forms do not include "certification of registration" or "certification of approval." The Commission should clarify if "certification of registration" and "certification of approval" were intended to be part of the fee report form for "certification of history of licensure." If so, these fees should be added to the fee report form that accompanies the final regulation. If the Commission intended to include these fees on separate fee report forms, those forms should be included with the final regulation.

Fee report form for ownership change—private real estate school

This fee report form contains a typographical error. The administrative overhead is listed as \$3.56. It should be changed to \$13.56.

Name change—private real estate school and initial license application—private real estate school

The fee report form for "Name change—private real estate school" lists the Commission meeting average cost

as \$39.67. The fee report form for "Initial license application—private real estate school" lists the average cost of Commission review as \$21.87. The Commission review of an initial license application is more detailed than the review of a name change. We request the Commission explain why the cost for the Commission meeting for a name change is higher than the more detailed Commission review of an initial license application.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 99-1807. Filed for public inspection October 22, 1999, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission received, on the dates indicated, the following regulations for review. To obtain the date and time of the meeting, interested parties may contact the office of the Commission at (717) 783-5417. To obtain a copy of the regulation, interested parties should contact the agency promulgating the regulation.

Final-Omit

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
14-463	Department of Public Welfare Office of Medical Assistance Programs Emergency Medical Condition	10/07/99
14-464	Department of Public Welfare Subsidized Child Day Care Eligibility	10/13/99

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 99-1808. Filed for public inspection October 22, 1999, 9:00 a.m.]

INSURANCE DEPARTMENT

Alleged Violation of Insurance Laws

Wesley K. Wyatt; Doc. No. SC99-08-017

Notice is hereby given of the Order to Show Cause issued on September 28, 1999 by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania in the above-referenced matter. Violation of the following is alleged: Insurance Department Act of 1921 (40 P.S. §§ 234 and 279), 31 Pa. Code §§ 37.46 and 37.47, 18 U.S.C.A. § 1033.

Respondent shall file a written answer to the Order to Show Cause within 30 days of the date of issue. If Respondent files a timely answer, a formal administrative hearing shall be held in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); 1 Pa. Code §§ 31.1—35.193, 35.225—35.251 (relating to General Rules of Administrative Practice and Procedure); 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure) and other relevant procedural provisions of law.

Answers, motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed in writing with the Docket Clerk, Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA 17102.

Persons with a disability who wish to attend the above-referenced administrative hearings, and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency ADA Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 99-1809. Filed for public inspection October 22, 1999, 9:00 a.m.]

Application for Approval to Acquire Control of Provident Indemnity Life Insurance Company

AHC Acquisition, Inc. has filed an application for approval to acquire control of Provident Indemnity Life Insurance Company, a Pennsylvania domiciled stock limited life insurance company. The filing was made under the requirements set forth under the Insurance Holding Companies Act (40 P.S. § 991.1402, et seq.). Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department within 15 days from the date of publication of this notice in the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed, and a concise statement with sufficient detail and relevant facts to inform the Insurance Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Insurance Company Licensing Specialist, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120; fax (717) 787-8557; e-mail chybee@ins.state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 99-1810. Filed for public inspection October 22, 1999, 9:00 a.m.]

List of Approved Data Service Vendors

Under the authority of the Motor Vehicle Physical Damage Appraisers Act (63 P.S. §§ 851—863), the Insurance Commissioner hereby lists data service providers approved to calculate the replacement value of total loss or unrecovered vehicles under 31 Pa. Code § 62.3(e)(1), Motor Vehicle Physical Damage Appraisers regulation.

A listing of approved replacement value data service providers will be published annually in the *Pennsylvania Bulletin*. In the interim, an updated listing may be obtained by contacting the Insurance Department, Bureau of Consumer Services, 1321 Strawberry Square, Harrisburg, Pa. 17120. Requests for this information may also be submitted to consumer@ins.state.pa.us or telephone toll free (877) 881-6388 or faxed to (717) 787-8585.

Approved Replacement Value Data Service Providers

Red Book
National Market Reports,
Inc.
Circulation Department
29 N. Wacker Drive
Chicago, Illinois 60606-3298
(800) 621-9907

NADA Book
Subscription Department
Post Office Box 7800
Costa Mesa, California
92628-9924
(800) 544-6232

CCC Information Services,
Inc.
444 Merchandise Mart
Chicago, Illinois 60654-1005
(800) 621-8070

ADP Claims Solution
Group, Inc.
4211 S.E. International
Way, #A
Milwaukie, Oregon 97222
(800) 959-6237

(*Editor's Note:* For a final rulemaking affecting this notice, see 29 Pa.B. 5511 (October 23, 1999).)

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 99-1811. Filed for public inspection October 22, 1999, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insurer has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P.S. § 1171.8) in connection with the termination of the insured's residential or personal property policy. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Erie Insurance Group; file no. 99-181-04735; Aldo V. and Josephine A. Celotto; doc. no. P99-10-008; November 10, 1999, at 10 a.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files and other necessary evidence. The insured must bring all documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); section 8 of the Unfair Insurance Practices Act (40 P.S. § 1171.8) and the regulations set forth at 31 Pa. Code § 59.7(e) (relating to appeal procedures). Under 31 Pa. Code § 59.7(e)(5), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to partici-

pate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 99-1812. Filed for public inspection October 22, 1999, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board lease will expire:

Philadelphia County, Wine & Spirits Shoppe #5148, 6132 Lancaster Avenue, Philadelphia, PA 19151-3229.

Lease Expiration Date: May 31, 2000

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 4,000 net useable square feet of new or existing retail commercial space in Philadelphia on Lancaster Avenue between City Avenue and 57th Street.

Proposals due: November 12, 1999 at 12 Noon

Department: Pennsylvania Liquor Control Board
Location: Real Estate Division, 4501 Kelly Drive,
Philadelphia, PA 19129-1794
Contact: Robert Jolly, (215) 560-5310

JOHN E. JONES, III,
Chairperson

[Pa.B. Doc. No. 99-1813. Filed for public inspection October 22, 1999, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Acquire Water System Assets Without Hearing

A-212370F0056. Philadelphia Suburban Water Company. Application of Philadelphia Suburban Water Company for approval to acquire the water system assets of White Horse Village, Inc., located in the certificated territory of Philadelphia Suburban Water Company in Edgmont Township, Delaware County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before November 8, 1999, under 52 Pa. Code (relating to public utilities).

Applicant: Philadelphia Suburban Water Company

Through and By Counsel: Mark J. Kropilak, Vice President and General Counsel, Philadelphia Suburban Water

Company, 762 W. Lancaster Ave., Bryn Mawr, PA 19010-3489.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 99-1814. Filed for public inspection October 22, 1999, 9:00 a.m.]

Electronic Transaction Auditing of Telephone Customer Proprietary Information; Doc. No. L-00970123

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; David W. Rolka; Nora Mead Brownell; Aaron Wilson, Jr.

Public Meeting held
September 30, 1999

Order

By the Commission:

On July 17, 1997, the Commission proposed regulations to require the maintenance of electronic transaction auditing records with respect to data processing records and the maintenance of detailed records in any instance where customer information was disclosed to persons outside the telephone company, any government entity, or the telephone company security department. The Commission has received numerous comments from the public. We take notice that, while these comments have been under consideration, the Commission received no further reports of abuse of customer information subsequent to the original reports which were the initiating cause of this proceeding.

Additionally, while this matter has been pending, the Federal Communication Commission has proposed rules covering the same subject matter at *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115 (Orders Adopted May 16, 1996, February 19, 1998, May 21, 1998, September 23, 1998 and September 3, 1999). The FCC inquiry arose from a number of requests by local exchange carriers for clarification of their responsibilities to protect confidential customer proprietary network information (CPNI).

Section 702 of the Telecommunications Reform Act of 1996 adds a new section 222 to the Communications Act of 1934, as amended, 47 U.S.C. § 222, 110 Stat. 148. Section 222 enjoins a duty upon every telecommunications carrier to protect the confidentiality of proprietary information. We note that while Section 222 does not purport to preempt state authority to enforce laws, rules, or regulations with respect to customer privacy, the FCC's orders indicate that it may act in the future to preempt state regulations in the event that it perceives a conflict between its resolution of Section 222 CPNI issues and specific state regulations. Both the FCC's CPNI Order entered in 1998¹ and its Order on Reconsideration released September 3, 1999 declare that while no preemption is indicated at this time, Section 222 gives the FCC the power to preempt states with regard to local CPNI regulation "where such regulation would negate the [Federal Communication] Commission's exercise of its lawful

¹Implementation of the Telecommunications Act of 1996; *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, etc., CC Docket Nos. 96-115 and 96-149, *Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061 (1998)

authority because regulation of the interstate aspects of the matter cannot be severed from the intrastate aspects." It should be noted that the United States Court of Appeals for the Tenth District vacated these regulations in a three judge opinion issued August 18, 1999. *U.S. West v. F.C.C.*, 182 F.3d 1224; 1999 U.S. App. LEXIS 20785 (1999), a decision which we anticipate will be subject to additional appellate review by the courts of the United States.

It appears that the FCC has approached the same issues in a national context, and is working actively with all segments of the industry to implement customer protections similar to those proposed in our originally proposed rules.

Since the issuance of our original proposed rulemaking, there have been vast changes in technology and business organization that have changed the national telecommunications industry. Cellular, PCS, and switched packet systems, including the internet, carry an increasing share of voice communications. While the FCC, with authority based on the Federal Communications Act, may have jurisdiction to regulate all these modes of communication, we do not. We ought to and we do take heed of the changes wrought by technological progress and the FCC's ongoing rulemaking, along with the apparent lack of continuing local issues with regard to CPNI privacy. Prudence dictates that this proposed regulation be shelved pending resolution of CPNI issues at the federal level.

Should the FCC abandon its efforts to prescribe adequate safeguards for sensitive customer information, we may revisit this issue. However, it does not appear necessary at this time to promulgate these proposed rules and we will therefore direct that this proceeding be closed; *Therefore, It Is Ordered That:*

1. This proceeding shall be marked closed
2. This order shall be published in the *Pennsylvania Bulletin*.
3. A copy of this order shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all telephone utilities and the Pennsylvania Telephone Association.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 99-1815. Filed for public inspection October 22, 1999, 9:00 a.m.]

Reconciliation Filing Without Hearing

R. 00994875. PP&L, Inc. On October 1, 1999, PP&L, Inc., (PP&L) submitted its annual Intangible Transition Charge Reconciliation Filing to the Pennsylvania Public Utility Commission (PUC). The Customer Choice Act (act) and orders issued by the PUC to implement that act provide for annual reconciliation of PP&L's Intangible Transition Charges (ITCs). This reconciliation filing is subject to review and approval by the PUC. Any under-collection or over-collection of ITCs during calendar year 1999 will be reflected in the calendar year 2000 ITCs, which will become effective on January 1, 2000.

Copies of the Reconciliation Filing are available upon request from PP&L by writing to: PP&L, Inc., Office of

General Counsel, Two North Ninth Street, Allentown, PA 18101, or by calling 1-800-DIAL-PPL (1-800-342-5775).

This reconciliation filing may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on PP&L on or before November 12, 1999, under 52 Pa. Code (relating to public utilities).

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 99-1816. Filed for public inspection October 22, 1999, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before November 15, 1999, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

Applications of the following for amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under each application.

A-00109668, F. 1, Am-D. Kirk Livery, Inc. (126 McClellan Drive, Pittsburgh, Allegheny County, PA 15236), a corporation of the Commonwealth of Pennsylvania—persons in limousine service, between points in the counties of Armstrong and Indiana, and from points in the said counties, to points in Pennsylvania, and return: *So as to permit the transportation of persons in limousine service, between points in the counties of Washington, Westmoreland, Beaver, Cambria and Somerset, and from points in the said counties, to points in Pennsylvania, and return.* *Attorney:* William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219-2383.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.

A-00116149, Folder 2. Joseph D'Ambra (2399 New Holland Pike, Lancaster, Lancaster County, PA 17601)—persons in paratransit service, between points in the county of Lancaster, and from points in said county, to points in Pennsylvania, and return.

*Pennsylvania Public Utility Commission, Bureau of
Transportation and Safety v. Great Escape Vacations,
Ltd., t/a Great Escape Travel; Doc. No. A-00111467C99*

Complaint

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth

of Pennsylvania, empowered to regulate motor carriers and brokers within this Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Great Escape Vacations, Ltd., t/a Great Escape Travel, respondent, maintains a principal place of business at 11 Centennial Way, Scottdale, PA 15683.

2. That all times relevant to this Complaint, respondent held a brokerage license issued by this Commission at Application Docket No. A-00111467.

3. That pursuant to Section 512 of the Public Utility Code, 66 Pa.C.S. § 512, and 52 Pa. Code Chapter 32; respondent is required to maintain evidence of a surety bond on file with this Commission.

4. That respondent has failed to maintain evidence of a surety bond, in violation of the Public Utility Code and regulations cited in Paragraph 3 of this complaint.

5. That as a result of failure to maintain evidence of a surety bond on file with this Commission, the Bureau of Transportation and Safety Prosecutory Staff requests that the Secretary of the Commission revoke respondent's brokerage license.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Secretary of the Commission revoke the brokerage license held by Great Escape Vacations, Ltd., t/a Great Escape Travel at Docket No. A-00111467, for failure to maintain evidence of a surety bond on file with the Commission.

Respectfully submitted,
George T. Mahan, Director
Bureau of Transportation
and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

Verification

I, George T. Mahan, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____
George T. Mahan

Notice to Plead

A. You must file an answer within twenty (20) days of the date of service. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice to plead. 52 PA Code § 1.56(a). The answer must raise all factual and legal arguments that you wish to claim in your defense and must include the docket number of this Complaint. Your answer must be verified and the original and two (2) copies sent to:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty (20) days of the date of service as identified in Paragraph

A. above, the Bureau of Transportation and Safety will request that the Commission enter an order revoking your certificate of public convenience; contract carrier permit; or brokerage license or imposing such other remedy as may be appropriate.

C. In lieu of an answer, you may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the proof of insurance from your insurer, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order revoking your certificate of public convenience; contract carrier permit; or brokerage license.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 99-1817. Filed for public inspection October 22, 1999, 9:00 a.m.]

Telecommunications

A-310871. Bell Atlantic-Pennsylvania, Inc. and AirTouch Paging. Joint Petition of Bell Atlantic-Pennsylvania, Inc. and AirTouch Paging for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Bell Atlantic-Pennsylvania, Inc. and AirTouch Paging by its counsel, filed on August 12, 1999, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Bell Atlantic-Pennsylvania, Inc. and AirTouch Paging Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 99-1818. Filed for public inspection October 22, 1999, 9:00 a.m.]

Telecommunications

A-310870. Bell Atlantic-Pennsylvania, Inc. and Metrocall, Inc. Joint Petition of Bell Atlantic-Pennsylvania, Inc. and Metrocall, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Bell Atlantic-Pennsylvania, Inc. and Metrocall, Inc. by its counsel, filed on August 12, 1999, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Bell Atlantic-Pennsylvania, Inc. and Metrocall, Inc. Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 99-1819. Filed for public inspection October 22, 1999, 9:00 a.m.]

Telecommunications

A-310415F0003. Bell Atlantic-Pennsylvania, Inc. and UniDial Communications, Inc. Joint Petition of Bell Atlantic-Pennsylvania, Inc. and UniDial Communications, Inc., for approval of a resale agreement under section 252(e) of the Telecommunications Act of 1996.

Bell Atlantic-Pennsylvania, Inc. and UniDial Communications, Inc., by its counsel, filed on August 12, 1999, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of a resale agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Bell Atlantic-Pennsylvania, Inc. and UniDial Communications, Inc. Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 99-1820. Filed for public inspection October 22, 1999, 9:00 a.m.]

Telecommunications

A-310478F0002. GTE North Incorporated and Advanced Telephone Systems, Inc. d/b/a HTC Communications. Joint Application for approval of an Interconnection Agreement between GTE North Incorporated and Advanced Telephone Systems, Inc. d/b/a HTC Communications.

GTE North Incorporated and Advanced Telephone Systems, Inc. d/b/a HTC Communications, by its counsel, filed on October 5, 1999, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the GTE North Incorporated and Advanced Telephone Systems, Inc. d/b/a HTC Communications Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 99-1821. Filed for public inspection October 22, 1999, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Proposals

The Philadelphia Regional Port Authority (PRPA) will accept proposals until 2 p.m. on Thursday, November 4, 1999, for Project #99-280-001, (Asphalt Materials). The bid documents can be obtained from the Director of Procurement, Philadelphia Regional Port Authority (PRPA), 210 W. Washington Square, 13th Floor, Philadelphia, PA 19106, (215) 928-9100 and will be available Tuesday, October 26, 1999. PRPA is an equal opportunity employer. The contractor will be required to comply with all applicable equal opportunity laws and regulations.

JAMES T. MCDERMOTT,
Executive Director

[Pa.B. Doc. No. 99-1822. Filed for public inspection October 22, 1999, 9:00 a.m.]

STATE EMPLOYEES' RETIREMENT BOARD

Hearings Scheduled

Hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the State Employees' Retirement System, 30 North Third Street, Fifth Floor, Harrisburg, PA 17108:

October 25, 1999	Wayne J. Hettinger (Continue Disability Retirement Benefits)	1:30 p.m.
October 26, 1999	Ralph M. Bailets (Multiple Service)	10 p.m.
November 29, 1999	Tamara D. Wilingham (Continue Disability Retirement Benefits)	1:30 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective

positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 4 Pa. Code § 250.01 (relating to applicability of general rules), procedural matters will be in conformance with the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II unless specific exemption is granted.

JOHN BROSIUS,
Secretary

[Pa.B. Doc. No. 99-1823. Filed for public inspection October 22, 1999, 9:00 a.m.]

TURNPIKE COMMISSION

Retention of an Engineering Firm

Final Design of Section 54C of the Findlay Connector

Allegheny and Washington Counties, Pennsylvania

Reference No. E-010

The Turnpike Commission (Commission) will select an engineering firm to perform the final design of the Findlay Connector (PA 60 to US 22) of the Southern Beltway Transportation Project in Allegheny and Washington Counties. One consultant will be selected to develop complete plans, specifications and estimates for the section that includes the interchange with US 22 in Washington County and extends approximately 4.0 kilometers to north of the proposed Bald Knob Road interchange in Allegheny County. The Commission will provide complete Step 9 plans to the selected consultant. The estimated construction cost for this section is \$37 million.

The firm selected may be required to perform field surveying; geotechnical and mining investigations; Roadway Design; Structural Design including Type, Size and Location (TS&L) and final plans of structures; Utility Coordination; Drainage; Storm Water Management; Erosion and Sedimentation Control Plan; traffic analysis; defining environmental impacts; public involvement; and coordination with various Federal, State and local agencies and special interest groups.

The following factors will be considered by the Commission during the evaluation of the firms submitting Letters of Interest for this project:

- a. Specialized experience and technical competence of prime consultant and subconsultants. The Team must clearly demonstrate an ability to analyze available data to make decisions and develop plans to complete the project in a timely and cost effective manner.
- b. Past record of performance with respect to cost control, work quality, ability to meet schedules and previous experience on similar projects. The consultant should identify similar projects that have been completed by that firm as the prime, the magnitude of the project, and the client.
- c. The specific experience and number of individuals who constitute the firm.
- d. Location of consultant's office where the work will be performed.
- e. Workload of the prime consultant and subconsultants for all Department of Transportation and Turnpike Commission projects.
- f. Other factors, if any, specific to the project.

Address these items and any necessary further details in a brief yet comprehensive manner in the letter of interest.

The Commission is committed to the inclusion of disadvantaged, minority and woman firms in contracting opportunities. The minimum participation level for DBE/MBE/WBEs in this contract will be 10%. Responding firms shall clearly identify DBE/MBE/WBE firms, expected to participate in this contract, in their letter of interest. If the selected firm does not meet the minimum requirement for DBE/MBE/WBE participation, they will be required to demonstrate good faith efforts to achieve the required level. Proposed DBE/MBE/WBE firms must be certified by the Department of Transportation at the time of the submission of the letter of interest. If further information is desired concerning DBE/MBE/WBE participation, direct inquiries to the Office of Equal Opportunity Development, Pennsylvania Turnpike Commission at the above address, or by calling (717) 939-9551, Ext. 4241.

Direct inquiries to Mark F. Raup, at (717) 939-9551, Ext. 3632, or by e-mail at mraup@paturnpike.com.

Final Design of Section 54B of the Findlay Connector

Allegheny County, Pennsylvania

Reference No. E-011

The Turnpike Commission (Commission) will select an engineering firm to perform the final design of the Findlay Connector (PA 60 to US 22) of the Southern Beltway Transportation Project in Allegheny and Washington Counties. One consultant will be selected to develop complete plans, specifications and estimates for the section that extends approximately 3.0 kilometers from north of the proposed Bald Knob Road interchange to north of the proposed interchange with US 30 in Allegheny County. The Commission will provide complete Step 9 plans to the selected consultant. The estimated construction value for this section is \$27 million.

The firm selected may be required to perform field surveying; geotechnical and mining investigations; Roadway Design; Structural Design including Type, Size and Location (TS&L) and final plans of structures; Utility Coordination; Drainage; Storm Water Management; Erosion and Sedimentation Control Plan; traffic analysis; defining environmental impacts; public involvement; and coordination with various Federal, State and local agencies and special interest groups.

The following factors will be considered by the Commission during the evaluation of the firms submitting Letters of Interest for this project:

- a. Specialized experience and technical competence of prime consultant and subconsultants. The Team must clearly demonstrate an ability to analyze available data to make decisions and develop plans to complete the project in a timely and cost effective manner.
- b. Past record of performance with respect to cost control, work quality, ability to meet schedules and previous experience on similar projects. The consultant should identify similar projects that have been completed by that firm as the prime, the magnitude of the project, and the client.
- c. The specific experience and number of individuals who constitute the firm.
- d. Location of consultant's office where the work will be performed.

e. Workload of the prime consultant and subconsultants for all Department of Transportation and Turnpike Commission projects.

f. Other factors, if any, specific to the project.

Address these items and any necessary further details in a brief yet comprehensive manner in the letter of interest.

The Commission is committed to the inclusion of disadvantaged, minority and woman firms in contracting opportunities. The minimum participation level for DBE/MBE/WBEs in this contract will be 10%. Responding firms shall clearly identify DBE/MBE/WBE firms, expected to participate in this contract, in their letter of interest. If the selected firm does not meet the minimum requirement for DBE/MBE/WBE participation, they will be required to demonstrate good faith efforts to achieve the required level. Proposed DBE/MBE/WBE firms must be certified by the Department of Transportation at the time of the submission of the letter of interest. If further information is desired concerning DBE/MBE/WBE participation, direct inquiries to the Office of Equal Opportunity Development, Turnpike Commission at the above address, or by calling (717) 939-9551, Ext. 4241.

Direct inquiries to Mark F. Raup, at (717) 939-9551, Ext. 3632, or by e-mail at mraup@paturndpike.com.

Final Design of Section 54A of the Findlay Connector

Allegheny County, Pennsylvania

Reference No. E-012

The Turnpike Commission (Commission) will select an engineering firm to perform the final design of the Findlay Connector (PA 60 to US 22) of the Southern Beltway Transportation Project in Allegheny and Washington Counties. One consultant will be selected to develop complete plans, specifications and estimates for the section in Allegheny County that extends approximately 2.0 kilometers from north of the interchange with US 30 to and including, the interchange with PA 60 at the Pittsburgh International Airport and all work along PA 60, approximately 5.5 kilometers. The Commission will provide complete Step 9 plans to the selected consultant. The estimated construction value of this section is \$56 million.

The firm selected may be required to perform field surveying; geotechnical and mining investigations; Roadway Design; Structural Design including Type, Size and Location (TS&L) and final plans of structures; Utility Coordination; Drainage; Storm Water Management; Erosion and Sedimentation Control Plan; traffic analysis; defining environmental impacts; public involvement; and coordination with various Federal, State and local agencies and special interest groups.

The following factors will be considered by the Commission during the evaluation of the firms submitting Letters of Interest for this project:

a. Specialized experience and technical competence of prime consultant and subconsultants. The Team must clearly demonstrate an ability to analyze available data to make decisions and develop plans to complete the project in a timely and cost effective manner.

b. Past record of performance with respect to cost control, work quality, ability to meet schedules and previous experience on similar projects. The consultant should identify similar projects that have been completed by that firm as the prime, the magnitude of the project, and the client.

c. The specific experience and number of individuals who constitute the firm.

d. Location of consultant's office where the work will be performed.

e. Workload of the prime consultant and subconsultants for all Department of Transportation and Turnpike Commission projects.

f. Other factors, if any, specific to the project.

Address these items and any necessary further details in a brief yet comprehensive manner in the letter of interest.

The Commission is committed to the inclusion of disadvantaged, minority, and woman firms in contracting opportunities. The minimum participation level for DBE/MBE/WBEs in this contract will be 10%. Responding firms shall clearly identify DBE/MBE/WBE firms, expected to participate in this contract, in their letter of interest. If the selected firm does not meet the minimum requirement for DBE/MBE/WBE participation, they will be required to demonstrate good faith efforts to achieve the required level. Proposed DBE/MBE/WBE firms must be certified by the Department of Transportation at the time of the submission of the letter of interest. If further information is desired concerning DBE/MBE/WBE participation, direct inquiries to the Office of Equal Opportunity Development, Turnpike Commission at the above address, or by calling (717) 939-9551, Ext. 4241.

Direct inquiries to Mark F. Raup, at (717) 939-9551, Ext. 3632, or by e-mail at mraup@paturndpike.com.

General Requirements and Information

Firms interested in providing the above work and services are invited to submit a Letter of Interest with the required information. The Letters of Interest must include the following:

1. One page transmittal letter clearly identifying the project reference number, brief description of the project from the advertisement, the firm's Federal identification number, the firm's legal name, contact person or project manager, address of corporate office and project office. If the firm has multiple offices, the location of the office performing the work must be identified.

2. Three page expression of interest in the advertised project. Each firm should demonstrate their ability to perform the specific requirements indicated for this project and provide explanation that the firm has successfully completed similar type projects of the same magnitude.

3. An organization chart for the Project, identifying key personnel and any subconsultants and their roles. Any deviation from the subconsultants listed in the letter of interest will require written approval from the Commission.

4. Tabulation of workload for the prime consultant and all subconsultants for all Department of Transportation and Turnpike Commission projects.

5. A copy of the Annual Qualification Package submitted to the Department of Transportation for the current year that is in the same District as this project or one that is best suited for this project. If a firm desires to submit a letter of interest for more than one of the projects listed above, only one copy of the Annual Qualification Package needs to be submitted.

The Annual Qualification Package should contain at a minimum, the following information for the prime con-

sultant and all subconsultants which should be attached to the back of the letter of interest (subs to follow primes):

- Standard Form (SF) 254—Architect-Engineer and Related Services Questionnaire in its entirety, not more than 1 year old as of the date of the advertisement.
- Resumes of key personnel expected to be involved in the project. (limit to one 8 1/2 x 11 page, one side, per person). Only resumes of key personnel should be included.
- Copy of the firm's registration to do business in this Commonwealth as provided by the Department of State for firms with out-of-State headquarters or corporations not incorporated in Pennsylvania.
- A copy of the Department's DBE/WBE Certification, if applicable.

If a Joint Venture responds to a project advertisement, the Commission will not accept separate letters of interest from joint venture constituents. A firm will not be permitted to submit a letter of interest on more than one joint venture for the same project reference number. Also, a firm that responds to a project as a prime may not be included as a designated subconsultant to another firm that responds to the same project advertisement. This does not preclude a firm from being set forth as a designated subconsultant to more than one prime consultant responding to the project advertisement.

Firms interested in performing the above services are invited to submit a letter of interest and required information to Frank J. Kempf, P.E., Assistant Chief Engineer Development Projects/Programs, at the Turnpike Commission Administration Building located at 176 Kost Road, Carlisle, PA 17013-9779 (parcel delivery address) (Mailing Address: P. O. Box 67676, Harrisburg, PA 17106-7676).

The letter of interest and required information must be received by 12 p.m. (noon), Friday, November 12, 1999. Any letters of interest received after this date and time will be time-stamped and returned.

Based on an evaluation of acceptable letters of interest received in response to this solicitation, one firm will be selected for each project. The order of preference will be established for the purpose of negotiating an agreement with the highest ranked firm established by the Technical Review Committee and approved by the Selection Committee. Technical Proposals or Requests for Proposals will not be requested prior to selection.

The Commission reserves the right to reject all letters of interest, to cancel solicitation requested under this notice, and/or to re-advertise solicitation for the work and services.

JAMES F. MALONE, III,
Chairperson

[Pa.B. Doc. No. 99-1824. Filed for public inspection October 22, 1999, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center

PA Department of Community and Economic Development

374 Forum Building

Harrisburg, PA 17120

800-280-3801 or (717) 783-5700

Reader's Guide

Legal Services & Consultation—26

① Service Code
Identification Number

② Commodity/Supply or
Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services

Location: Harrisburg, Pa.

Duration: 12/1/93-12/30/93

Contact: Procurement Division
787-0000

③ Contract
Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:)
Vendor Services Section
717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.

② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.

③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.

④ Department: State Department or Agency initiating request for advertisement.

⑤ Location: Area where contract performance will be executed.

⑥ Duration: Time estimate for performance and/or execution of contract.

⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, *"Frequently Asked Questions About State Contracts,"* explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**

Pennsylvania State Treasury
Room G13 Finance Building
Harrisburg, PA 17120
717-787-2990
1-800-252-4700

BARBARA HAFER,
State Treasurer

Commodities

1141169 Furnish, install and provide training for a Vertonix alliance diagnostic system.

Department: State System of Higher Education
Location: Lancaster, PA
Duration: FY 1999—2000
Contact: General Services, (717) 787-2199 or (717) 787-4705

7314320 Imagesetter with various attachments. For copy of bid package fax request to (717) 787-0725.

Department: Liquor Control Board
Location: Harrisburg, PA
Duration: FY 1999—2000
Contact: General Services, (717) 787-2199 or (717) 787-4705

7314310 Safe, Money. For copy of bid package fax request to (717) 787-0725.

Department: Liquor Control Board
Location: Various
Duration: FY 1999—2000
Contact: General Services, (717) 787-2199 or (717) 787-4705

1208049 Latest model 1/2 ton, 4x4 pickup truck. For copy of bid package fax request to (717) 787-0725.

Department: General Services
Location: Harrisburg
Duration: FY 1999—2000
Contact: General Services, (717) 787-2199 or (717) 787-4705

1205119 Cold roll sheet steel, various sizes. Must conform to ASTM A366. For copy of bid package fax request to (717) 787-0725.

Department: Corrections
Location: Pittsburgh, PA
Duration: FY 1999—2000
Contact: General Services, (717) 787-2199 or (717) 787-4705

1174389 Tree shelter with accompanying ratchet-locking tie and kiln dried stake. For copy of bid package fax request to (717) 787-0725.

Department: Conservation and Natural Resources
Location: Spring Mills
Duration: FY 1999—2000
Contact: General Services, (717) 787-2199 or (717) 787-4705

SERVICES

Computer Related Services—08

SC 160069 Millersville University is seeking qualified bidders who can provide the university with services to satisfy its needs for identification and management of prospective donors within the university's alumni/development constituent database using analysis strategies that will update constituent records electronically. Interested bidders should fax their requests to be placed on a bidders list to Anna Stauffer, (717) 871-2000 no later than 2 p.m., Friday, October 29, 1999.

Department: State System of Higher Education
Location: Millersville University, Millersville, PA 17551
Duration: 3 months from contract approval
Contact: Anna Stauffer, (717) 872-3041

Construction and Construction Maintenance—09

IN-799.1 Paving Construction General Campus Area. Work included under this project consists of paving construction, general campus areas (including Punxsutawney and Armstrong Campus) consisting of the replacement of existing asphaltic, concrete paving throughout the University Campus. Notice of Contractors may be requested from IUP: phone: (724) 357-2289, fax: (724) 357-6480, Internet: <http://www.iup.edu/engcons>. No MBE requirements.

Department: State System of Higher Education
Location: Indiana University of Pennsylvania
Duration: Five (5) years
Contact: Ronald E. Wolf, (724) 357-4851

015DGS1103-38PR2 Project title: Prepurchase chillers for the Upper Campus Chilled Water Plant. Brief description: Work consists of, but is not limited to, furnishing and delivery of chillers for the Upper Campus Chilled Water Plant, including shop drawings and installation technical support. Estimated range: \$1,000,000 to \$2,000,000. Prepurchase chillers. Plans deposit: \$50 per set. Payable to: Pitt-Center Partners. Refundable upon return of plans and specifications in reusable condition (no marks allowed) as construction documents within 15 days after the bid opening date. Plans and specifications may be obtained by prospective bidders at the office of the Pitt-Center Partners, 1020 Lebanon Road, West Mifflin, PA 15122-1036, (412) 462-9300, Attn: Marlene Martak. The bidder is responsible for the cost of delivery of the plans and specifications. Mail a separate check for \$20 or provide your express mail account number to the office mentioned above. Bid date: Wednesday, October 27, 1999, at 11 a.m.

Department: General Services
Location: University of Pittsburgh Campus, Pittsburgh, Allegheny County, PA
Duration: Calendar days as identified in the invitation to bid/bid proposal form
Contact: Contract and Bidding Unit, (717) 787-6556

FDC-429-588 Construction of a building foundation (excavation; concrete work; masonry; installation of anchor bolts, tie-downs, foundation and downspout drains, basement floor drains and piping, and sleeves; backfilling, compacting, topsoil placement, and grading). Project is at Lackawanna State Park. Bid documents may be requested on or after October 25, 1999.

Department: Conservation and Natural Resources
Location: North Abington Township
Duration: 120 calendar days
Contact: Construction Management Section, (717) 787-5055

FDC-202-618 Rehabilitate an existing swimming pool structure (demolition, reinforced PVC swimming pool membrane system, and concrete deck replacement—37 c.y.). Project is at Cook Forest State Park. Bid documents may be requested on or after October 25, 1999.

Department: Conservation and Natural Resources
Location: Farmington Township
Duration: Complete all work by May 1, 2000
Contact: Construction Management Section, (717) 787-5055

015DGS1103-38PR4 Project title: Prepurchase pumps for the Upper Campus Chilled Water Plant. Brief description: Work consists of, but is not limited to, furnishing and delivery of pumps for the Upper Campus Chilled Water Plant, including shop drawings and installation technical support. Estimated range: \$75,000 to \$125,000. Prepurchase pumps. Plans deposit: \$50 per set. Payable to: Pitt-Center Partners. Refundable upon return of plans and specifications in reusable condition (no marks allowed) as construction documents within 15 days after the bid opening date. Plans and specifications may be obtained by prospective bidders at the office of the Pitt-Center Partners, 1020 Lebanon Road, West Mifflin, PA 15122-1036, (412) 462-9300, Attn: Marlene Martak. The bidder is responsible for the cost of delivery of the plans and specifications. Mail a separate check for \$20 or provide your express mail account number to the office mentioned above. Bid date: Wednesday, October 27, 1999, at 11 a.m.

Department: General Services
Location: University of Pittsburgh Campus, Pittsburgh, Allegheny County, PA
Duration: Calendar days as identified in the invitation to bid/bid proposal form
Contact: Contract and Bidding Unit, (717) 787-6556

015DGS406-49 Revised Rebid Project title: Construction of Disabled Student Facility. Brief description: Renovations to existing Crawford Hall and new two story addition with basement. Work includes general construction with sitework, hazardous materials and elevators, HVAC, plumbing and electrical construction. Estimated range: \$2,000,000 to \$5,000,000. General, HVAC, Plumbing and Electrical Construction. Plans deposit: \$250 per set. Payable to: Weber Murphy Fox. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check or provide your express mail account number to the office listed. Mail requests to: Weber Murphy Fox, 300 State Street—Suite 200, Erie, PA 16507, (814) 456-2953. Bid date: Wednesday, November 10, 1999, at 11 a.m. A prebid conference has been scheduled for Tuesday, October 26, 1999, at 3 p.m. at Edinboro University, Crawford Hall in the Gymnasium, Edinboro, PA. A walk through will be held from 1 p.m. to 3 p.m. Contact: Richard Speicher, (814) 456-2953 or Kimberley Palmer. Contractors who have secured contract documents are invited and urged to attend this prebid conference and walk through.

Department: General Services
Location: Edinboro University, Edinboro, Erie County, PA
Duration: 365 calendar days from date of initial job conference
Contact: Contract and Bidding Unit, (717) 787-6556

Telecommunications 99-010 Replace telephone cabling between the Bengals Building at Mayview State Hospital and the Volunteer House at Mayview State Hospital. Cable to be new and underground. For a complete set of specifications call the number listed in this publication.

Department: Public Welfare
Location: Mayview State Hospital—Bengals Building and Volunteer Building, 601 Mayview Road, Bridgeville, PA 15017-1599
Duration: Within Fiscal Year 1999 (December 1, 1999 through June 30, 2000)
Contact: Fred Molisee, (412) 257-6215

015DGS1103-38PR3 Project title: Prepurchase Cooling Towers for the Upper Campus Chilled Water Plant. Brief description: Work consists of, but is not limited to, furnishing and delivery of Cooling Towers for the Upper Campus Chilled Water Plant, including shop drawings and installation technical support. Estimated range: \$100,000 to \$400,000. Prepurchase Cooling Towers. Plans deposit: \$50 per set. Payable to: Pitt-Center Partners. Refundable upon return of plans and specifications in reusable condition (no marks allowed) as construction documents within 15 days after the bid opening date. Plans and specifications may be obtained by prospective bidders at the office of the Pitt-Center Partners, 1020 Lebanon Road, West Mifflin, PA 15122-1036, (412) 462-9300, Attn: Marlene Martak. The bidder is responsible for the cost of delivery of the plans and specifications. Mail a separate check for \$20 or provide your express mail account number to the office mentioned above. Bid date: Wednesday, October 27, 1999, at 11 a.m.

Department: General Services
Location: University of Pittsburgh Campus, Pittsburgh, Allegheny County, PA
Duration: Calendar days as identified in the invitation to bid/bid proposal form
Contact: Contract and Bidding Unit, (717) 787-6556

401-BL-595 Ben Franklin Computer Center Fire Suppression. Provide labor, equipment and material necessary to install a new preaction fire suppression system in the computer center of the BF building. The system will include emergency drain pan, automatic detection and fire alarm, including tie in to the university central station, modifications for emergency power shutdown, precast underground vault for sprinkler service entry, and interior fire rated partition construction. Project will consist of three prime contracts: general, plumbing and electrical. To obtain a copy of the bid documents submit a nonrefundable deposit to Comprehensive Design/Architects, 3054 Enterprise Drive, State College, PA 16801-2755, in the amount of \$50. All information related to the project will be included in the package.

Department: State System of Higher Education
Location: Bloomsburg, PA
Duration: 90 days
Contact: Joseph C. Quinn, (570) 389-4311

RFP 11-99 One Card System: Seeking a firm to supply and install all components of a single card system on campus. The work will include providing all labor, equipment, materials, software and any hardware required to implement the complete system. The work will include the interfacing of this system with existing programs at the university, and will require the awarded contractor to provide and install locking devices on door buildings as part of this proposal to work off of the system provided. It is the intent of the university to release the proposal request within the next 60 days to those firms requesting the package. To obtain the package please submit a request in writing to Bloomsburg University, Waller Bldg., Room 38, Bloomsburg, PA 17815 - Attn: Robert Hakim. In your letter request a copy of this proposal by RFP #11-99 when it released. We will accept requests until October 29, 1999 for this listing.

Department: Bloomsburg University, SSHE
Location: Bloomsburg
Duration: 2 Years
Contact: Joseph Quinn/Robert Hakim, (570) 389-4311

Engineering Services—14

08430AG2430 To provide construction inspection and documentation services on S. R. 0079, Section 290, Cranberry Interchange/Turnpike Connector, Interstate 79/U. S. Route 19/PA Turnpike, Butler County.

Department: Transportation
Location: Engineering District 10-0
Duration: Twenty-four (24) Months
Contact: Consultant Agreement Division, (717) 783-9309

08430AG2429 To provide preliminary engineering, environmental studies, final design and construction consultation services on S. R. 0081, Section 023, Interstate 81 reconstruction from Interstate 78 to Schuylkill County Line, Lebanon County.

Department: Transportation
Location: Engineering District 8-0
Duration: Thirty-six (36) Months
Contact: Consultant Agreement Division, (717) 783-9309

08430AG2428 To perform preliminary engineering and environmental studies for S. R. 0056, Section 024 in Cambria, Westmoreland and Indiana Counties.

Department: Transportation
Location: Engineering District 9-0
Duration: Thirty-six (36) Months
Contact: Consultant Agreement Division, (717) 783-9309

Financial and Insurance Consulting—17

SP3881139005 Provide materials and installation of woven wire deer fencing as follows: Two fences in the Elk State Forest, Cameron County. Fence area No. 1—Cooks Run 1, approximately 3,900 lineal feet perimeter, located in Grove Township. Fence Area No. 2—Cooks Run II, approximately 5,050 lineal feet perimeter, located in Grove Township. Also seven walk-thru gates, primed and painted yellow. Site inspection will be on November 3, 1999, at 10 p.m., District Office. Bid opening is November 10, 1999, at 2 p.m.

Department: Conservation and Natural Resources
Location: Grove Township, Cameron County, Elk State Forest, District 13, P. O. Box 327, Emporium, PA 15834
Duration: June 30, 2000
Contact: Robert W. Martin, Jr., District Forester, (814) 486-3353

Food—19

Inquiry No. 3867 Juice, frozen, 4 oz. portions.

Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505
Duration: January 1, 2000—March 31, 2000
Contact: Stanley Rygelski, P.A., (570) 587-7291

Inquiry No. 3866 Miscellaneous frozen foods.

Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505
Duration: January 1, 2000—March 31, 2000
Contact: Stanley Rygelski, P.A., (570) 587-7291

Inquiry No. 3863 Dairy.

Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505
Duration: January 1, 2000—March 31, 2000
Contact: Stanley Rygelski, P.A., (570) 587-7291

Inquiry No. 3859 Poultry, frozen.

Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505
Duration: January 1, 2000—March 31, 2000
Contact: Stanley Rygelski, P.A., (570) 587-7291

Inquiry No. 3858 Meats, frozen.

Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505
Duration: January 1, 2000—March 31, 2000
Contact: Stanley Rygelski, P.A., (570) 587-7291

G-5 Meat—to be delivered weekly during contract period.

Department: Military Affairs
Location: Southeastern Veterans Center, One Veterans Drive, Spring City, PA 19475
Duration: January 1, 2000—March 31, 2000
Contact: Theresa Barthel, P.A., (610) 948-2493

G-3 Bread and rolls—to be delivered three times weekly during contract period.

Department: Military Affairs
Location: Southeastern Veterans Center, One Veterans Drive, Spring City, PA 19475
Duration: January 1, 2000—March 31, 2000
Contact: Theresa Barthel, P.A., (610) 948-2493

5253 Bread and bread products to be delivered three times a week for the period of January, 2000—June, 2000.

Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, S. R. 1014, Torrance, PA 15779
Duration: January—June, 2000
Contact: Nancy E. Byers, (724) 459-4677

G-7 Frozen foods—to be delivered weekly during contract period.

Department: Military Affairs
Location: Southeastern Veterans Center, One Veterans Drive, Spring City, PA 19475
Duration: January 1, 2000—March 31, 2000
Contact: Theresa Barthel, P.A., (610) 948-2493

5256 Meat and meat products to be delivered once per month for the period of January, 2000—March, 2000.

Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, S. R. 1014, Torrance, PA 15779
Duration: January—March, 2000
Contact: Nancy E. Byers, (724) 459-4677

G-6 Poultry—to be delivered weekly during contract period.

Department: Military Affairs
Location: Southeastern Veterans Center, One Veterans Drive, Spring City, PA 19475
Duration: January 1, 2000—March 31, 2000
Contact: Theresa Barthel, P.A., (610) 948-2493

G-2 Fresh produce—to be delivered two times weekly during contract period.

Department: Military Affairs
Location: Southeastern Veterans Center, One Veterans Drive, Spring City, PA 19475
Duration: January 1, 2000—March 31, 2000
Contact: Theresa Barthel, P.A., (610) 948-2493

5255 Frozen fruit juice, 4 oz. portion, to be delivered once per week during the period of January, 2000—June, 2000.

Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, S. R. 1014, Torrance, PA 15779
Duration: January—June, 2000
Contact: Nancy E. Byers, (724) 459-4677

5257 Poultry and poultry products to be delivered once per month for the period of January, 2000—March, 2000.

Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, S. R. 1014, Torrance, PA 15779
Duration: January—March, 2000
Contact: Nancy E. Byers, (724) 459-4677

5258 Miscellaneous frozen foods to be delivered once per month for the period of January, 2000—March, 2000.

Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, S. R. 1014, Torrance, PA 15779
Duration: January—March, 2000
Contact: Nancy E. Byers, (724) 459-4677

0882-2951 Frozen fruits, vegetables and juices: Asparagus, cuts and tips; green beans, cut, blue lake variety, 4/5#, 12/2; wax beans-12/2#; broccoli, chopped-20# box; carrots, diced-12/2#; leafy greens, spinach-12/3#; mixed vegetables, 12/2#; peas, sweet green-12/2#; peas and carrots-12/2#; peppers, sweet, green-diced, 6/2#; potatoes, french fries-oven ready, crinkle cut; potatoes, white-tater tots, 6/5#; squash, cooked-12/4#; succotash-12/2.5#; potatoes, raw, white, diced-Grade A; vegetable blends; country, California, winter and Italian-2 to 5# pkg.; strawberries, sliced-with sugar, 6#; frozen juices: apple, grape, orange, orange-pineapple, pineapple, prune, apricot nectar, cranberry, and tomato, 4 oz., 48/cs.

Department: Public Welfare
Location: South Mountain Restoration Center, 10058 South Mountain Road, South Mountain, PA 17261
Duration: January 1, 2000—March 31, 2000
Contact: Sherry Wenger, Purchasing Department, (717) 749-4031 (9 a.m.—5 p.m.)

5254 Pastries to be delivered three times a week for period of January, 2000—June, 2000.

Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, S. R. 1014, Torrance, PA 15779.
Duration: January—June, 2000
Contact: Nancy E. Byers, (724) 459-4677

Hazardous Material Services—21

401-BL-554A Student Service Center Abatement Project—One General Abatement Contractor will be responsible to remove and dispose of asbestos-containing thermal system insulation, flooring material and transite from this facility at Bloomsburg University, prior to renovation of the building. The contractor shall hire an independent industrial hygienist to collect air samples and conduct inspections. The contractor shall also remove and dispose of polychlorinated biphenyl (PCB) light ballasts and mercury (Hg) light tubes, with PCB to be incinerated and the mercury recycled. The contractor to also conduct lead negative exposure assessments during abatement and demolition to evaluate airborne lead exposures due to the presence of lead paint throughout building. To obtain a copy of the bid documents submit a nonrefundable \$30 deposit to Murphy & Dittenhafer, 308 East Market Street, P. O. Box 2944, York, PA 17403, (717) 848-8627. All information required for bidding will be contained in the documents, which will be released in late October 1999.

Department: State System of Higher Education
Location: Bloomsburg, PA 17815
Duration: 45 days
Contact: Joseph C. Quinn, (570) 389-4311

HVAC—22

M-PL-99-023 Green thread fiberglass pipe and fittings for repair of underground water pipes.

Department: Corrections
Location: SCI Coal Township, 1 Kelley Drive, Coal Township, PA 17866
Duration: On or before December 1, 1999.
Contact: Faith L. Gilger, Purchasing Agent, (570) 644-7890, Ext. 143

FM-0029 One 225KW, 240V, 3 Phase, 60 Hertz Generator. Rate based on 5-day work week, 40 hours per month. Unit to be delivered on or before December 1, 1999, and removed after February 29, 2000. Removal must take place no later than March 31, 2000. Automatic transfer switch should be included in unit price.

Department: Transportation
Location: 17th and Arsenal Boulevard, Harrisburg, PA 17120
Duration: 90 days
Contact: Craig Bolinger, (724) 439-7382

10-C-99 Furnish HVAC services to Pittston Job Center on an as-needed-basis w/quarterly and seasonal inspections.

Department: Labor and Industry
Location: Pittston Job Center, 300 Kennedy Blvd., Pittston, PA 18640
Duration: 2 year w/2 year option
Contact: Norman J. Kee, (717) 705-0450

10-A-99 Provide HVAC services for Erie Job Center.

Department: Labor and Industry
Location: 1316 State Street, Erie, PA 16501
Duration: 1 year w/1 year option
Contact: Norman J. Kee, (717) 705-0450

10-B-99 Electrical service as needed on premises occupied by Erie Job Center.

Department: Labor and Industry
Location: Erie Job Center, 1316 State Street, Erie, PA 16501
Duration: 2 Year w/2 year option
Contact: Norman J. Kee, (717) 705-0450

Janitorial Services—23

1891810041 Provide janitorial services for the Pennsylvania Department of Revenue, Bureau of Audits at 4600 Edgemont Avenue, Brookhaven, PA 19105.

Department: Revenue
Location: Bureau of Audits, 4600 Edgemont Avenue, Brookhaven, PA 19105
Duration: 18 months, January 1, 1999 through June 30, 2001
Contact: Sandra Reece, (717) 787-6499

MR 0800-34 Microphor repairperson and plumber for maintenance work at the Department's rest areas, sites 45 and 46, located along Interstate 81 North and Southbound, Cumberland County, Penn Township. Personnel needed for this work must have had experience working with microphor toilets. Specifications and bid packages furnished on request.

Department: Transportation
Location: Interstate 81, Rest Areas sites 45 and 46, Penn Township
Duration: One (1) year with four 1 year renewals. Five (5) years total.
Contact: William Tyson, (717) 787-7600

Medical Services—29

Dental 99-004 Furnish and install dental equipment at Mayview State Hospital's Dental Department. One dental chair, one chair mounted dental unit, one mounted dental light, and one operator's stool. Call number listed in this publication for complete specifications.

Department: Public Welfare
Location: Mayview State Hospital, Dental Department, 1601 Mayview State Hospital, Bridgeville, PA 15017-1599
Duration: December 1, 1999—June 30, 2000
Contact: Frederick R. Molisee, (412) 257-6215

90976015 Radiology services.

Department: Public Welfare
Location: Polk Center, Polk, PA 16342
Duration: January 1, 2000—December 31, 2001 w/renewals
Contact: Patty Frank, Purchasing Agent, (814) 432-0229

90981026 Psychiatric consulting services to be provided onsite at the South West Secure Treatment Unit, Wiseman Building, Torrance, PA. It is estimated that 2 to 4 hours service will be required weekly. The anticipated start date for the contract is January 1, 2000. Telephone the YDC New Castle purchasing department for contract specifications, (724) 656-7310.

Department: Public Welfare
Location: South West Secure Treatment Unit, Wiseman Building, TSH State Route 1014, Torrance, PA 15779

Duration: January 1, 2000—December 31, 2002
Contact: T. E. Mateja, Purchasing Agent, (724) 656-7310

Property Maintenance—33

00676-000-99-AS-2 Scope includes: Project involves construction of a wood deck, restoration of wood shutters, restoration and fabrication of wood window sashes for a historic building. All work will conform to the Secretary of the Interior Standards for the Treatment of Historic Structures. A site visit is highly suggested. All site visits should be scheduled with site. For directions please contact the site at (215) 493-4076. All interested bidders should submit a request and a \$25 check (nonrefundable) made payable to PHMC for a bid package to: PA Historical & Museum Commission, Division of Architecture, Room 526, 3rd & North Streets, Harrisburg, PA 17120—Attention: Judi Yingling (717) 772-2401, or fax (717) 783-1073. Bids will be due on Wednesday November 4, 1999, at 11. Bid opening will be held in room 526 of The State Museum of PA, corner of 3rd & North Streets, Harrisburg, PA, Department/Agency: Historical and Museum Commission.

Department: Historical and Museum Commission
Location: Washington Crossing Historic Park, P. O. Box 103, Washington Crossing, PA 18977
Duration: November 10, 1999 to October 31, 2000
Contact: Judi Yingling, (717) 772-2401

00676-000-99-AS-3 Scope includes: Project involves preparation and painting of an historic wood clapboard building. All work will conform to the Secretary of the Interior Standards for the Treatment of Historic Structures. A site visit is highly suggested. All site visits should be scheduled with site. For directions please contact the site at (215) 493-4076. All interested bidders should submit a request and a \$25 check (nonrefundable) made payable to PHMC for a bid package to: Room 526, 3rd & North Streets, Harrisburg, PA 17120—Attention: Judi Yingling (717) 772-2401, or fax (717) 783-1073. Bids will be due on Wednesday November 4, 1999, at 11. Bid opening will be held in room 526 of The State Museum of PA, corner of 3rd & North Streets, Harrisburg, PA.

Department: Historical and Museum Commission
Location: Washington Crossing Historic Park, P. O. Box 103, Washington Crossing, PA 18977
Duration: November 10, 1999 to October 31, 2000
Contact: Judi Yingling, (717) 772-2401

03RS13 Tree removal and trimming in Bradford County, 11 miles on S. R. 706. Contractor to provide all equipment, labor, material and traffic control necessary to complete contract according to bid specification. Job is to be bid on per mile basis. Payment will be made lump sum. All requests for bid package must be received by fax at (570) 368-4343, Attn: Lyndon Mink.

Department: Transportation
Location: S. R. 706
Duration: 4 months
Contact: Lyndon B. Mink, (570) 368-4224

03RS09 Tree removal and trimming in Columbia County. Two lane mile on S. R. 339. Contractor to provide all equipment, labor, material and traffic control necessary to complete contract according to bid specification. Job is to be bid on per mile basis. Payment will be made lump sum. To obtain a bid package contact Lyndon B. Mink at (570) 368-4224.

Department: Transportation
Location: Columbia County
Duration: 4 months
Contact: Lyndon B. Mink, (570) 368-4224

03RS10 Tree removal and trimming in Montour County, 2 miles on various State routes. Contractor to provide all equipment, labor, material and traffic control necessary to complete contract according to bid specification. Job is to be bid on per mile basis. Payment will be made lump sum. To obtain a bid package contact Lyndon B. Mink at (570) 368-4224.

Department: Transportation
Location: Montour County
Duration: 4 months
Contact: Lyndon B. Mink, (570) 368-4224

03RS11 Tree removal and trimming in Northumberland County, 2.48 miles on S. R. 4004. Contractor to provide all equipment, labor, material and traffic control necessary to complete contract according to bid specification. Job is to be on per mile basis. Payment will be made lump sum. To receive a bid package contact Lyndon Mink at (570) 368-4224.

Department: Transportation
Location: Northumberland County
Duration: 4 months
Contact: Lyndon B. Mink, (570) 368-4224

03RS12 Tree removal and trimming in Sullivan County, 2 miles on S. R. 87 Contractor to provide all equipment, labor, material and traffic control necessary to complete contract according to bid specification. Job is to be bid on per mile basis. Payment will be made lump sum. All requests for bid package must be received by fax at (570) 368-4343, Attn: Lyndon Mink.

Department: Transportation
Location: S. R. 87
Duration: 4 months
Contact: Lyndon B. Mink, (570) 368-4224

00676-000-99-AS-4 Scope includes: Project involves tree removal and stump grinding, transplanting existing shrubs and grading and seeding. Installation of subsurface downspout drain lines will also be included. A site visit is highly suggested. All site visits should be scheduled with site. For directions please contact the site at (215) 493-4076. All interested bidders should submit a request and a \$25 check (nonrefundable) made payable to PHMC for a bid package to PA Historical & Museum Commission, Division of Architecture, Room 526, 3rd & North Streets, Harrisburg, PA 17120—Attention: Judi Yingling (717) 772-2401, or fax (717) 783-1073. Bids will be due on Wednesday, November 4, 1999, at 11. Bid opening will be held in room 526 of The State Museum of PA, corner of 3rd and North Streets, Harrisburg, PA.

Department: Historical and Museum Commission
Location: Washington Crossing Historic Park, P. O. Box 103, Washington Crossing, PA 18977
Duration: November 10, 1999 to October 31, 2000
Contact: Judi Yingling, (717) 772-2401

Real Estate Services—35

373883 Lease office space to the Commonwealth of Pennsylvania, Board of Probation and Parole, 3,390 useable sq. ft. of new or existing office space with parking for four vehicles, in Franklin, Venango County, PA within the following boundaries: North: Otter Street, South: Chestnut Street, East: Eleventh Street and West: Fifteenth Street. The office must be situated within 3 blocks of a public transportation system. The PA Board of Probation and Parole will occupy the space. Proposals due: December 20, 1999, Solicitation No. 92910.

Department: Probation and Parole Board
Location: 505 North Office Building, Harrisburg, PA 17125
Duration: Indeterminate 1999-2000
Contact: John A. Hocker, (717) 787-4396

Sanitation—36

SP386215901 Sealed bids will be received at the Department of Conservation & Natural Resources, M. K. Goddard State Park, 684 Lake Wilhelm Road, Sandy Lake, PA 16145-8715 and then publicly opened and read. Bid opening date: November 8, 1999, at 2 p.m. For solid waste collection and disposal at M. K. Goddard State Park. A bid proposal containing all pertinent information must be obtained from the office of the Park Manager, M. K. Goddard State Park.

Department: Conservation and Natural Resources
Location: M. K. Goddard State Park, 684 Lake Wilhelm Road, Sandy Lake, PA 16145-8715
Duration: January 1, 2000 to December 31, 2002
Contact: M. K. Goddard State Park, (724) 253-4833

SP3864009005 Collection and disposal of solid waste at Hickory Run State Park, R. R. 1, Box 81, White Haven, Carbon County, PA 18661-9712.

Department: Conservation and Natural Resources
Location: Hickory Run State Park, R. R. 1, Box 81, White Haven, PA 18661-9712
Duration: January 1, 2000 to December 31, 2004
Contact: Regional Park Office, (215) 453-5016

SP3864009006 For the collection and disposal of solid waste at Neshaminy State Park, 3401 State Road, Bensalem, Bucks County, PA 19020-5930.

Department: Conservation and Natural Resources
Location: Neshaminy State Park, 3401 State Road, Bensalem, PA 19020-5930
Duration: January 1, 2000 to December 31, 2004
Contact: Regional Park Office, (215) 453-5016

Miscellaneous—39

RFA 98-07-21 The Department of Health is issuing a Request for Application (RFA) 98-07-21 to fund projects that will promote the designation of dental health professional shortage areas (DHPSAs) in Pennsylvania. The Department, through the Bureau of Chronic Diseases and Injury Prevention, seeks to fund planning for DHPSAs, prior to plan implementation. Ten copies of the application should be submitted to the Pennsylvania Department of Health, Division of Contracts, Room 824, Health and Welfare Building, P.O. Box 90, Harrisburg, PA 17108-0090. A pre-application conference will be held at the time and date specified in the cover letter.

Department: Health
Location: Statewide
Duration: 6 months
Contact: Dr. Charles Ludwig, Oral Health Program Manager, (717) 783-1760

KURFP-0012: Kutztown University is seeking to solicit proposals from vendors capable of providing approximately 12 coin and card operated photocopy machines. Those firms interested in receiving RFP package must request it in writing to Brenda Adam, Kutztown University, Kutztown, PA 19530, phone: (610) 683-4136, fax: (610) 683-4674 or e-mail: adam@kutztown.edu. RFP packages will be available October 25 through November 1, 1999. A preproposal meeting will be held on November 1, 1999, at 10 a.m. Proposals are due by 12 noon on November 12, 1999.

Department: State System of Higher Education
Location: Kutztown University, Kutztown, PA 19530
Duration: 5 years
Contact: Brenda Adam, (610) 683-4136

1191000050 The contractor shall provide in-house vocational or business-related education certificate program services to incarcerated adults at State Correctional Institution Pittsburgh. The classes shall be for accredited courses as approved by the Middle State Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools and may be transferable to other regionally accredited postsecondary institutions. The approved courses of study shall lead to certificates of specialization in various vocational or business-related programs of study.

Department: Corrections
Location: State Correctional Institution at Pittsburgh, Contact: Department of Corrections Central Office, 2520 Lisburn Road, Camp Hill, PA 17011
Duration: Estimated 60 months beginning on or about February 1, 2000
Contact: Patricia J. Cassell, (717) 975-4999

10078005 Carroll Manual long term care, high/low bed, # 01981 (80") 4" extension kit # 01990, full length bed rail, # 01996.

Department: Public Welfare
Location: White Haven Center
Duration: Indeterminate 1999-2000
Contact: Sandra A. Repak, Purchasing Agent, (570) 443-4232

1191000049 The contractor shall provide in-house vocational or business-related education certificate program services to incarcerated adults at State Correctional Institution Smithfield. The classes shall be for accredited courses as approved by the Middle State Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools and may be transferable to other regionally accredited postsecondary institutions. The approved courses of study shall lead to certificates of specialization in various vocational or business-related programs of study.

Department: Corrections
Location: State Correctional Institution at Smithfield, Contact: Department of Corrections Central Office, 2520 Lisburn Road, Camp Hill, PA 17011
Duration: Estimated 60 months beginning on or about February 1, 2000
Contact: Patricia J. Cassell, (717) 975-4999

1256 Vertical cutter/mixer.

Department: Public Welfare
Location: Selinsgrove Center, Box 500, Route 522, Selinsgrove, PA 17870
Duration: Indeterminate 1999-2000
Contact: Arletta K. Ney, Purchasing Agent, (570) 372-5070

1191000047 The contractor shall provide in-house vocational or business-related education certificate program services to incarcerated adults at the State Correctional Institution at Albion. The classes shall be for accredited courses as approved by the Middle States Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools and may be transferable to other regionally accredited postsecondary institutions. The approved courses of study shall lead to certificates of specialization in various vocational or business-related programs of study.

Department: Corrections
Location: State Correctional Institution at Albion, Contact: Department of Corrections Central Office, 2520 Lisburn Road, Camp Hill, PA 17011
Duration: Estimated 60 months beginning on or about February 1, 2000
Contact: Patricia J. Cassell, (717) 975-4999

SU 719.1 Reroofing Rife Alumni House. Shippensburg University of the State System of Higher Education invites General Contractors to request bid documents for this project. General work includes removal of existing shingle type roofing and siding. Removal of existing underlayment, existing gutters, downspouts, flashing and drip edges, repair of wood roof, new underlayment, shingle roofing, flashings, gutters and downspouts. New shingle siding and underlayment on dormers and repair of existing wood trim at dormers. Prospective bidders may obtain project plans by faxing a request to (717) 477-4004, Deborah K. Martin at Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257. Prebid meeting with site visit immediately to follow will be held on Wednesday, November 3, 1999, at 10 a.m. in the Reed Operations Center. Bids due November 23, 1999, at 4 p.m. Old Main Room 300. Public bid opening: November 24, 1999 at 2 p.m., Old Main Room 203A. The system encourages responses from small firms, minority firms and firms which may have not previously performed work for the system. Nondiscrimination and Equal Opportunity are the policies of the Commonwealth and the PA State System of Higher Education.

Department: State System of Higher Education
Location: Shippensburg University, Shippensburg Township, Shippensburg, PA
Duration: 90 days from date of Notice to Proceed
Contact: Deborah K. Martin, Contract Administrator, (717) 532-1121

SP 3890068 Services required for rental of single engine, four place, high wing aircraft and pilot for use in forest fire prevention, detection, fire fighting and Forest Pest Management work for Forest District 20. All flights will leave and return from Bloomsburg Airport.

Department: Conservation and Natural Resources
Location: Bloomsburg, PA
Duration: Upon Notice to Proceed through December, 2001
Contact: Ruth Dewaelsche, (717) 783-0760

3881079004 Contract services for electric deer fence installation on State Forest land. There is one project location consisting of approximately 10,100 lineal feet perimeter off of Thomas Dam Road, Hartley Township, Union County.

Department: Conservation and Natural Resources
Location: Bald Eagle State Forest, Rt. 45, Laurelton, PA 17835
Duration: October 31, 2000
Contact: Mike Becker, (570) 922-3344

3881079003 Contract services for woven wire deer fence installation on State Forest land, as follows: 1. Approximately 6,950 lineal ft. perimeter off of Mountain Road, White Deer Township, Union County, 2. Approximately 6,300 lineal ft. perimeter off of Black Gap Road, Miles Township, Centre County, 3. Approximately 8,600 lineal ft. perimeter off of Thomas Dam Road, Hartley Township, Union County, 4. Approximately 12,000 lineal ft. perimeter off of Weikert Road, Hartley Township, Union County, 5. Approximately 6,270 lineal ft. perimeter off of Weikert Run Road, Hartley Township, Union County, 6. Approximately 13,728 lineal ft. perimeter off of Strong's Improvement Road, Armagh Township, Mifflin County.

Department: Conservation and Natural Resources
Location: Bald Eagle State Forest, Route 45, Laurelton, PA 17835
Duration: October 31, 2000
Contact: Mike Becker, (570) 922-3344

98-33 Rail Transit Safety Review Program. The objective of this project is to encourage Transportation Safety Consultants to submit qualified proposals for fixed guideway transit safety evaluation services in Pennsylvania. Interested contractors may request a copy of the Request for Proposals (RFP) by faxing their name, company name, address, telephone number and fax number to Roberta Cooper at (717) 783-7971. Please reference RFP 98-33 on your fax.

Department: Transportation
Location: Statewide (all counties)
Duration: Twelve months with option of four 1-year renewals.
Contact: Roberta Cooper, (717) 787-4006

1191000048 The contractor shall provide in-house vocational or business-related education certificate program services to incarcerated adults at State Correctional Institution Cambridge Springs. The classes shall be for accredited courses as approved by the Middle State Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools and may be transferable to other regionally accredited postsecondary institutions. The approved courses of study shall lead to certificates of specialization in various vocational or business-related programs of study.

Department: Corrections
Location: State Correctional Institution at Cambridge Springs, Contact: Department of Corrections Central Office, 2520 Lisburn Road, Camp Hill, PA 17011
Duration: Estimated 60 months beginning on or about February 1, 2000
Contact: Patricia J. Cassell, (717) 975-4999

[Pa.B. Doc. No. 99-1825. Filed for public inspection October 22, 1999, 9:00 a.m.]

DESCRIPTION OF LEGEND

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| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,
Secretary

Contract Awards

The following awards have been made by the Department of General Services, Bureau of Purchases:

Requisition or Contract #	PR Award Date or Contract Effective Date	To	In the Amount Of
9985-02 SUPP # 2	10/8/99	TEK Cuisine Inc BKA Wickey's Ca- terers	60,000.00
9985-02 RIP# 1/SUP# 1	10/8/99	Nutrition Inc	60,000.00
9985-02 RIP# 1/SUP# 1	10/8/99	Kitchenworks Caterers	60,000.00
1024159-01	10/12/99	Cybex Interna- tional Inc	40,664.42
1147219-01	10/12/99	Spirax Sarco Inc	14,740.00

Requisition or Contract #	PR Award Date or Contract Effective Date	To	In the Amount Of
1152359-01	10/12/99	Ekto Mfg Corp	37,680.00
7284270-01	10/12/99	Standard Reg- ister Co	145,734.34
8250140-01	10/12/99	Five Star In- ternational LLC	160,306.00
8250430-01	10/12/99	Manchester Industries Inc	29,913.00
8505000-01	10/12/99	Sunbury Mo- tor Co	25,314.00

GARY E. CROWELL,
Secretary

[Pa.B. Doc. No. 99-1826. Filed for public inspection October 22, 1999, 9:00 a.m.]

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 551, 553, 555, 557, 559, 561, 563, 565, 567, 569, 571 AND 573]

Ambulatory Surgical Facilities

Scope and Purpose

This final-form rulemaking amends the standards for the licensing and operation of ambulatory surgical facilities and implements the statutory mandate in section 806(f) of the Health Care Facilities Act (act) (35 P. S. § 448.806(f)) requiring the establishment of separate licensure criteria for office based surgical facilities and for comprehensive freestanding ambulatory surgical facilities. These amendments also reflect the modernization of ambulatory surgical facility standards which are appropriate given improvements in medical technology.

The act (35 P. S. §§ 448.101—448.904b) provides that, to be issued a license, the applicant shall show that: 1) it is a responsible person; 2) the place to be used as a health care facility is adequately constructed, equipped and maintained and safely and efficiently operated; 3) it will provide safe and efficient services adequate for the care and treatment of patients or residents; and 4) it is in substantial compliance with the rules and regulations of the Department of Health (Department). (See section 808(a) of the act (35 P. S. § 448.808(a)).

With the sunset of the Certificate of Need (CON) program, the Department is adopting these amendments to assure that aspects of quality care and patient safety, previously addressed through the CON program, will now be enforced through the licensure process.

Public Comments

Notice of proposed rulemaking was published at 27 Pa.B. 3609 (July 19, 1997) with an invitation to submit written comments within 30 days.

Within the 30-day comment period, the Department received comments from the following respondents: The Pennsylvania Society of Physician Assistants; The Lowry Surgicenter; The Pennsylvania Ambulatory Surgical Association; The Hanover Surgicenter; The Lehigh Anesthesia Associates; Wyomising Hills Professional Center; Pennsylvania Dental Association; Hospital and Healthsystem Association of Pennsylvania; Pennsylvania Medical Society; Pennsylvania Podiatric Medical Association; Sacred Heart Hospital; Pennsylvania Association of Nurse Anesthetists; Kay Larkin, Esquire; Pennsylvania Psychological Association; Edward Dench, M.D.; Abington Surgical Center; HealthSouth; Senator Joseph Uliana; Representative Dennis M. O'Brien; and the State Board of Nursing.

After the comment period, the Department received comments from the Independent Regulatory Review Commission (IRRC). It also met with staff and counsel from IRRC prior to preparing the final rulemaking. Also, a stakeholder's meeting was held on May 19, 1999, to discuss a draft of the final-form regulations and a subsequent meeting to review those regulations was held with IRRC.

Following is a discussion of the comments received by the Department and the Department's response to them:

Chapter 551. General Information

§ 551.3 Definitions.

One person noted that the definition of "ambulatory surgical facility (ASF)" states a facility is not located on the premises of a hospital and asked for clarification of what is meant by "premises of a hospital." The Department considers the premises of a hospital to be that building and attachment covered by the hospital's license.

Another person requested that the definition of "ASF" exclude dental offices, because a definition would be consistent with § 551.2 (relating to affected institutions) which states that dentists' and oral surgeons' offices are excluded except if they are providing ambulatory surgery. The Department believes that since the exclusion is already contained in § 551.2, to repeat it in the definition would be redundant.

Finally, IRRC expressed a preference for amending the definition to track the definition in the act. The final rulemaking contains a definition of "ambulatory surgical facility" that is the same as that contained in section 802.1 of the act (35 P. S. § 448.802a).

Regarding the definition of "anesthesia," the Pennsylvania Medical Society and IRRC noted that the word "routine" should be replaced by the word "route." That change has been included in the final rulemaking.

Several comments were received with respect to the classification levels of ASFs and the distinctions between them for regulatory purposes.

David Bartos, D.P.M., requested that the Department accept accreditation by the Accreditation Association of Podiatric Surgical Facilities and the Pennsylvania Medical Society requested that the Department accept accreditation by the American Association for the Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) for purposes of Class A designation. The act empowers the Department to combine surveys and inspections and make the dates of licensure expiration coincide with that of Medical Assistance and Medicare certification or the accreditation of an applicable Nationally recognized accrediting agency. (35 P. S. § 448.804(b)). As to Nationally recognized accrediting agencies, the Department relies upon those accrediting agencies designated by the Federal Medicare Program for deemed certification purposes. The accrediting agencies thus far recognized by the Federal Medicare Program are the Accreditation Association for Ambulatory Health Care (AAAHC) and the Joint Commission on the Accreditation of Health Care Organizations (JCAHO). The Federal Medicare Program has recently announced the approval of AAAASF as an accreditation organization for deemed certification purposes as of March 2, 1999. The accrediting agency proposed for inclusion by Dr. Bartos is not currently designated by the Federal Medicare Program, therefore, the Department has not made the suggested change. The Department, however, has included AAAASF as a Nationally recognized accrediting agency in the final rulemaking.

Dr. Edward Dench commented that the Class A facilities should be allowed to use intravenous general anesthesia because in limited circumstances certain local anesthetics could also cause suppressed breathing. By

contrast Senator Uliana requested that the Department clarify and expand upon its authority over Class A facilities. IRRC also asked that the Department respond to Dr. Dench and Senator Uliana.

In response to these comments, the Department has revised the definition of "Class A facilities" and their licensure requirements. The definition of a "Class A facility" will not include the proposed references to accreditation. The references and the Department's system for registering the facilities have been moved to § 551.31 (relating to licensure) which governs licensure of ambulatory surgical facilities. To draw the distinction between the types of procedures and anesthesia permitted in "Class A facilities," in contrast to Class B and Class C facilities, the Department is providing that those types of procedures which are performed in Class A facilities are those which require either no anesthesia, or local or topical anesthesia and during which reflexes are not obtunded. Therefore, certain procedures such as some endoscopies, removal of some foreign bodies and certain types of minor surgery would be permitted in Class A facilities. Certain types of surgery would not be permissible, even though a local or topical anesthetic might be used, because reflexes would be obtunded. Obtunded reflexes include the breathing reflex, the blinking reflex and the pupillary dilation and contraction reflex, or the involuntary joint extension or contraction reflex.

Representative O'Brien provided several comments with respect to classification levels including suggesting a requirement that Class A facilities be limited to one operating room and that accreditation by AAAHC or JCAHO be mandated. Representative O'Brien also suggested that Class B and Class C facilities should have a minimum of two operating rooms because this requirement would demonstrate a greater commitment to performing surgery at a higher volume of services raising the level of medical skill and service available in those ASFs. IRRC asked that the Department address these concerns as well.

The Department agrees that volume of procedures performed is related to quality but does not believe that quality is enhanced by the number of operating rooms in an ASF. Indeed, it is possible that mandating two operating rooms would encourage unnecessary procedures which would be both contrary to quality care and may also unnecessarily increase the cost of health care. The Department has amended the regulations to refer specifically to the standards of AAAHC and JCAHO. The Department currently works with JCAHO for the licensure of hospitals and will work with both AAAHC and JCAHO in the hopes of combining licensure and accreditation in one survey process. This is consistent with the Department's practice with respect to hospitals and is a matter that has already been discussed with these accrediting organizations. The Department will also consider working with other accrediting organizations as each becomes a Nationally recognized accrediting body. The Department has not amended the regulations to require ASFs to maintain a specific number of operation rooms.

§ 551.21. Criteria for ambulatory surgery.

The Department received comments from three sources, including IRRC, regarding the length of supervised recovery. Two of the commentators urged that up to 24 hours of supervised recovery be permitted at an ASF on the premise that the recovery would be safe and less expensive than hospital care. The Department believes that the extension of time to 4 hours of surgery and 4 hours of

recovery, for surgery to be considered ambulatory surgery, is appropriate for the following reasons. First, the reason for extending the surgery time, but not the recovery time, is due to the development of newer anesthetic agents which enable surgeons to conduct longer periods of surgery. These same anesthetic agents also enable the patient to have a shorter recovery period.

Second, to extend the length of the permitted recovery time would require significant additional regulation by the Department of facility services, including housekeeping, nursing staff, social work staff and nutrition services. Once those items are added, the ASF regulations would be similar to hospital regulations. Therefore, entities that wish to provide 24-hour care should obtain hospital licenses.

Third, the work group, which included representatives of consumers, physicians and other providers, as well as representatives of the Pennsylvania Ambulatory Surgical Association (PASA), concluded that permitting 24-hour services would result in managed care organizations forcing patients to have complex procedures which require lengthy recovery, such as the now infamous "drive by mastectomies," in these settings. While the procedures might be physically safe in these settings, the group unanimously agreed that patient recovery would be better served by limiting cases that require that much recovery to hospitals.

Fourth, PASA provides no citation or other support for its statistics which do not account for complications, infections or other morbidity. Also, while PASA provides no support for its assertion that surgery in an ASF is less expensive than out-patient hospital procedures, that issue is not a quality of care consideration under the Department's purview.

IRRC suggested that the term "generally" should be stricken from this section as it does not establish a regulatory standard. While the Department agrees with IRRC, it also recognizes that, in certain unforeseen circumstances, the amount of time necessary may exceed 4 hours for either operation time or supervised recovery. Accordingly, the Department has added subsection (b) which provides that the time limits established in subsection (a) may be exceeded only if the patient's condition demands care or recovery beyond the 4-hour limit and the need for this additional time could not have been anticipated prior to surgery. This should address those rare cases when the extra time needed for proper treatment of the patient arises suddenly and unexpectedly. The Department expects the number of surgeries which exceed the 4-hour standard will be minimal and would question a facility where this standard is routinely violated.

Similarly, IRRC recommended striking the term "generally" in subsection (d)(1) and (4) which identify types of surgical procedures which may not be performed in an ASF. The Department has stricken the term in both instances, but has added language to subsection (d)(4), which stated, as proposed that surgical procedures may not be performed in an ASF if they are either emergency or life threatening in nature, to permit performance of this procedure in an ASF if no hospital is available for the procedure and the need for the surgery could not have been anticipated. The additional language has been added in recognition that an ASF may be located in a remote location where there is no nearby hospital to which the patient can be transported in time for appropriate treatment.

Finally, the Department believes that patients who undergo surgery in an ASF should be fully aware of the

risks associated with the administration of anesthesia and the surgery to be performed, as well as the option to have the surgery performed elsewhere. The Department has added subsection (e) requiring the surgeon to inform the patient of the risks, benefits and alternatives associated with the anesthesia to be administered, the procedure which will be performed and with performing the procedure in an ASF instead of in a hospital.

§ 551.22. Criteria for performance of ambulatory surgery on pediatric patients.

The Department received several comments on § 551.21(d)(5) which proposed that patients younger than 6 months of age and low birth weight babies up to 1 year of age could not be treated in an ASF.

The Hanover Surgicenter suggested amending the limitation on pediatric surgery by permitting surgery on infants classified as Class 1 patients with a gestational age of at least 48 weeks or those patients who are at least 6 months of age. The Department responds by noting that the proposed standard was developed after seeking advice from pediatric surgeons and reflects the minimum standard for safety.

On that particular requirement, the Pennsylvania Medical Society and IRRC proposed the use of the term "premature" rather than low birth weight babies. The work group decided, and the Department agrees, that the baby's condition, rather than the time of birth, should be the relevant factor. Whether or not a baby should be considered "low birth weight" is a professional judgment for the pediatrician.

The Hospital Association of Pennsylvania (HAP) recommended that ambulatory surgery should only be provided to pediatric patients if there is a pediatric anesthesiologist present and the physician is Board certified in pediatric surgery. IRRC suggested that the Department clearly specify separate criteria for pediatric patients in sections where pediatric treatments or requirements would be different than those required for adult patients.

To address these concerns appropriately, the Department has decided to create a new section which sets forth the criteria for performance of ambulatory surgery on pediatric patients. Subsection (a)(1) retains the requirement previously set forth in proposed § 551.21(d)(5) that no child under 6 months of age may be treated in an ASF. Subsection (a)(2) provides that the child's medical record shall contain documentation that the surgeon consulted with and sought an opinion from the child's primary care provider as to the appropriateness of performing the procedure in an ASF. If an opinion cannot be obtained (for example, child does not have a primary care provider), the record shall contain documentation providing an explanation. This will promote coordination of the surgery between the child's primary care physician and the surgeon. The primary care physician should be consulted by the surgeon. As the physician with the most comprehensive knowledge of the child's medical history, the primary care physician should be able to decide when the child's surgery should be not be performed in an ASF. Consultation between the primary care physician and surgeon is recommended by the American Academy of Pediatrics in its *Guidelines for the Pediatric Perioperative Anesthesia Environment* (issued February 1999) and also in a Policy Statement issued by the Academy in September, 1996 entitled *Evaluation and Preparation of Pediatric Patients Undergoing Anesthesia*.

Subsection (a)(3) sets forth requirements regarding the qualifications of the surgeon and the anesthetist who are

involved in pediatric surgery in an ASF. Subsection (a)(3)(i) provides that the anesthesia services shall be provided by an anesthesiologist who is a graduate of an anesthesiology residency program accredited by the Accreditation Council for Graduate Medical Education or its equivalent or by a certified registered nurse anesthetist trained in pediatric anesthesia, either of whom shall have documented demonstrated historical and continuous competence in the care of these patients. This requirement is adopted from a similar standard in the *Guidelines* previously referenced. Subsection (a)(3)(ii) provides that the practitioner who performs the surgery shall be either board certified or have obtained preboard certification status. The Department believes that it is appropriate to require this higher level of training for the performance of surgery on children. The Department agrees with the statement that children are not "little adults" and that the performance of surgery on children in an outpatient setting requires that the surgical and anesthesia team have specialized training in the treatment of pediatric patients. Subsection (a)(4) requires that if a pediatric patient is present in the facility, a medical professional certified in advanced pediatric life support shall also be present in the facility. The subsection provides that the courses which the Department recognizes for certification in advanced pediatric life support are: 1) the course offered by the American Academy of Pediatrics and the American College of Emergency Physicians (commonly referred to as APLS); and 2) the course offered by the American Academy of Pediatrics and the American Heart Association (commonly referred to as PALS).

§ 551.31. Licensure.

While no comments were directly submitted on this particular section, the comments of Senator Uliana, the House Health and Human Services Committee and IRRC all impact on the relationship between the classification levels and licensure. The Department has amended this section to include a registration system for Class A ASFs which requires Class A ASFs to be accredited by a Nationally recognized accrediting agency. The Department has the ability to perform vigorous oversight if necessary and will not register a Class A ASF unless the facility has received this accreditation.

The Department believes that the risk of harm or injury to patients in these types of facilities should be minimal. To monitor Class A ASFs and to determine if this assumption is valid, the Department has added language which requires the applicant to complete a registration form and to provide the Department with information on the surgical procedures which will be performed in the ASF, the type of anesthetics to be administered and the current accreditation status of the facility. With this information, the Department will be in a position to assess whether the facility is properly classified as a Class A. The Department has also added a provision that the Class A ASF applicant shall provide other information the Department deems pertinent to registration requirements. Through this provision, the Department will be able to obtain any relevant information it needs to ensure that the ASF is meeting the criteria established for a Class A ASF.

The Department intends to monitor the performance of the Class A ASFs to determine if quality assurance concerns are raised at these facilities. Under subsection (f), the Department reserves the right to enter and inspect any ASF to investigate complaints. If the Department determines that registration is not the appropriate mechanism for these facilities based upon quality of care

problems that it identifies, it will seek amendment of these regulations to address that issue.

§ 551.34. Licensure process.

Several persons discussed the fee for licensure application. The Department is amending the regulation to conform to the fee as set by the act. It lacks the authority to impose fees inconsistent with the act.

§ 551.41. Policy.

PASA and Abington Surgical Center suggested that the time period for licensure should be changed. IRRC noted that the licensure period should follow the statute. The Department decided not to expand the licensure period to 2 years as proposed, and will continue to follow the statute which provides for a license to be issued for 1 year.

§ 551.61. Policy.

The House Health and Human Services Committee recommended that an ASF should be required to correct all deficiencies before a license is issued, because licensure requirements are ineffective without the ability to compel conformance.

The Department retains the discretion under §§ 551.82 and 551.83 (relating to regular license; and provisional license) to determine that the ASF is in substantial compliance with the regulations and that it has an acceptable plan of correction, prior to the Department issuing a provisional license. Absolute compliance is a standard unnecessary to assure the quality of health care and is inconsistent with not only the Department's requirements for other health care facilities but also Medicare standards and National accrediting standards. The Department has not made the recommended change.

§ 551.81. Principle.

IRRC requested an explanation of whether an ASF may continue to operate under licensure when it is out of compliance but has filed a compliance plan. Under this section, the Department is permitted to issue an ASF license to a facility that "complies with this subpart." This subpart includes § 551.82 which allows the Department to review and approve a plan of correction and to determine whether or not a facility is in substantial compliance with the Department's regulations. If the Department determines that the ASF is not in substantial compliance or if the Department has not approved the plan of correction, a regular license will not be issued. Under the act, the Department may issue a provisional license to ASF which is found to have deficiencies, but which is taking appropriate steps to correct those deficiencies. This is further explained in § 551.91 (relating to grounds) which addresses reasons why the Department may refuse to issue, renew, suspend, revoke or limit a license.

§ 551.82. Regular license.

As with the time period for a license discussed in § 551.61 (relating to policy), the Department decided not to expand the licensure period to 2 years as proposed, and will continue to follow the statute which provides for a license to be issued for 1 year.

§ 551.91. Grounds.

The Pennsylvania Medical Society asked for more detail on the investigation and adjudication process for the removal or revocation of an ASF license. The regulations as written in § 551.111 (relating to hearings relating to licensure) require that the hearings for the removal or revocation of a license be conducted by the State Facility

Hearing Board. That reference has been changed to the Health Policy Board. The State Health Facility Hearing Board conducted hearings under 37 Pa. Code 197 (relating to practice and procedure). Those regulations will continue to apply. Those provisions are applicable for all administrative hearings and are sufficient for these purposes. The investigation process is consistent with that for other facilities, as outlined in section 813 of the act (35 P. S. § 448.813).

The House Health and Human Services Committee suggested that the Department add a provision whereby it may deny or revoke a license if any owner of the applicant is not fit to operate an ASF. The comment also asserted that the Department should consider the applicant's prior history of at least 5 years in operating health care facilities in any jurisdiction, including violations of licensure regulations or other health related laws. The rationale for this suggestion is that the extent of the health related offenses, licensure violations and other improper conduct, both in this Commonwealth and in other jurisdictions, is an indication of whether a health care provider/organization should be entrusted with the health and well being of Commonwealth patients.

The Department agrees with the rationale, but believes that it already has sufficient authority to implement the quality control rightfully requested by the House Health and Human Services Committee. First, section 808(a)(1) of the act provides that the Department must be satisfied that, among other things, "the health care provider is a responsible person." To list offenses would unnecessarily restrict the Department's discretion with respect to determining whether or not an applicant or provider is a responsible person.

Second, under subsection (b)(1) the Department may refuse to renew, or may suspend, revoke or limit a license for noncompliance with the act. Therefore, if the Department were to determine that the owners or providers of an ASF were no longer responsible persons, as mandated by the act, the ASF would be noncompliant and subject to revocation or suspension of the license.

Chapter 553. Ownership, Governance and Management

§ 553.3. Governing body responsibilities.

HAP, Lowry Surgicenter, the House Health and Human Services Committee and IRRC, recommended adding a requirement for pediatric advance life support when pediatric surgery is performed. The Department agrees with this recommendation and has amended paragraph (16) to reflect this requirement.

Subsection (b)(17) which required that all ASF personnel wear identification tags which include the person's name and professional designation, has been deleted as this requirement is now in § 51.6 (relating to identification of personnel).

§ 553.4. Other functions.

One person recommended the removal of the requirement that an ASF have a board certified medical director. IRRC requested that the Department demonstrate flexibility in this regard. The Department stands behind the mandate for a board certified medical director as an index of the quality of care that shall be provided in the ASF. Board certification is available to all trained surgeons and serves as an independent peer review acknowledgment of the qualifications of the physician. The Department has amended this regulation in subsection (h) to require that the medical director shall be board certified by an American Board of Medical Specialties recognized board

or the dental, podiatric or osteopathic equivalent and to allow a board eligible or similarly qualified physician to serve as an interim medical director during the period of time between the departure of a director and the selection of a new director. This interim medical director shall be a physician who is able to demonstrate qualifications acceptable to the medical staff of the ASF and to the Department.

§ 553.21. Principle.

HealthSouth requested that the Department permit transfer and discharge of a patient, by an ASF, to a rehabilitation hospital. The regulations do not prohibit transfer of a patient from an ASF to a rehabilitation hospital. Counsel to HealthSouth agreed with that analysis. No change has been made to this section, other than as proposed.

The House Health and Human Services Committee recommended that the Department add a provision mandating that ASFs provide minimum levels of care to the indigent and to Medical Assistance recipients. This recommendation was not adopted. While the Department appreciates the importance of having medical care available to all persons, mandating access is not authorized by the act. The Department's ability to enforce market controls in health care terminated with the sunset of the CON Program. However, most physicians participate in both the Medicare and Medicaid programs, which do not permit them to refuse to treat patients without threatening the physicians' participation in these programs. In addition, there is currently no evidence to suggest that the emergence of ASFs would limit care to the poor or indigent. Finally, the Department will continue to require that ASFs continue to abide by the Commonwealth's nondiscrimination laws.

Chapter 555. Medical Staff

§ 555.1. Principle.

The Pennsylvania Psychological Association recommended the addition of psychologists to the definition of "medical staff." Psychologists are not permitted to perform surgery in this Commonwealth. The Department has not revised this section.

§ 555.2. Medical staff membership.

The Pennsylvania Medical Society recommended board certification for medical staff membership on an ASF. The Department has required board certification for the medical director of an ASF. This requirement would be higher than that which is required of hospitals. The Department rejected this recommendation.

§ 555.12. Oral orders.

One commentator suggested substituting the phrase "verbal orders" for "oral orders" because this reference is consistent with current usage. The Department has not made this change. The phrase "oral orders" most accurately describes the type of orders discussed in this section.

The Department has added language to clarify that administration of medications through an oral order is restricted to only those individuals who are qualified to do so by their professional license or certification issued by the Commonwealth. The scope of practice of these individuals is the appropriate determinant as to their ability to administer medication.

There was some objection to the proposed requirement of a countersignature being placed in the medical record within 24 hours of the order. The objection was that this

period was not long enough. The Department has amended this time frame to 48 hours and added a provision that countersignatures may be received by facsimile transmission. The Department believes that this requirement is not unduly burdensome. With the proliferation of fax machines there should be no reason for failure to obtain countersignatures within the required period of time.

§ 555.13. Administration of drugs.

The Pennsylvania Society of Physician Assistants and IRRC suggested that the regulation should reflect that it is within the scope of practice of physician assistants (PAs), certified registered nurse practitioners (CRNPs), and registered nurses to administer drugs in an ambulatory surgical facility. The Department has amended this section accordingly.

§ 555.22. Preoperative care.

Sacred Heart Hospital recommended that the ASF should be required to arrange for patients who receive regional anesthesia to have a responsible person escort them home. The Department agrees with this recommendation and has amended this section to require that a medical decision be made in advance regarding whether patients who receive local or regional anesthesia require a responsible person to escort them home.

Sacred Heart Hospital asserted the need to identify necessary preoperative studies in the regulations. The recommendation was rejected because of the wide variety of procedures which may be performed in an ASF setting. It would be impossible to identify the preoperative studies that would be required in each case.

HAP suggested that a third person, in addition to the physician and the individual administering the anesthesia, should identify the patient prior to the administration of the anesthesia. The recommendation was rejected. While the Department agrees that making a third person responsible for identification of the patient may add another mechanism for certainty, this requirement would be cost prohibitive for many ASFs.

§ 555.23. Operative care.

Three persons, including IRRC, suggested that the Department modify the dual requirement that an ASF have a written transfer agreement and that the operating surgeon have surgical privileges at a hospital in close proximity to the ASF. The Department agrees that either a written transfer agreement or the operating surgeon having clinical surgical privileges at a nearby hospital will be an adequate protection, and has amended this section accordingly.

§ 555.24. Postoperative care.

One person suggested that when a CRNP or PA dictates the operative report, the report should be countersigned by the surgeon. The Department agrees with this recommendation and has amended this section accordingly.

PASA and Abington Surgical Center suggested that the ASF should ensure that all patients who receive anesthesia are observed in recovery. The regulation has been amended to require observation of all patients who receive anesthesia without distinction between types of anesthesia. The regulation requires that all patients who receive any type of anesthesia be observed in recovery.

Sacred Heart Hospital recommended that the Department should mandate that only a physician may discharge a patient. Subsection (g) addresses this concern, in part, by requiring that patients be discharged from an

ASF on the written signed order of a practitioner. "Practitioner" is defined in § 101.4 (relating to definitions) to include podiatrists, dentists and physicians.

Three organizations suggested that the anesthetist who provides anesthesia need not remain at the ASF during recovery so long as an anesthetist is present. The Department agrees with this, and has amended subsection (d) to require that if a patient receives general anesthesia or conscious sedation, an anesthetist shall remain present in the facility until that patient has been discharged.

The Lowry Surgicenter recommended retaining a requirement that an anesthesiologist or physician qualified in resuscitative techniques be required rather than a medical professional certified in ACLS. The work group concluded, and the Department agrees, that a medical professional certified in ACLS provides greater protection than a physician who lacks this training and certification. The Department has not made the suggested change.

Another person recommended that discharge instructions also include care of wound dressing, follow up appointments, emergency phone numbers and diet. The regulations as written already include a provision for follow up appointments and emergency contacts. The Department has added provisions requiring instructions on care of wound dressing and dietary limitations.

§ 555.31. Principle.

The Pennsylvania Medical Society requested that the Department delete the reference to the degree of supervision required and the scopes of responsibilities delegated to anesthesiologists and supervising physicians. Each individual ASF is permitted to enhance quality assurance by using protocols it may develop for the administration and supervision of anesthesia. The Department has not made the suggested deletion.

§ 555.32. Administration of anesthesia.

Several associations, including the Pennsylvania Association of Nurse Anesthetists (PANA), have opposed the requirement that when a nonphysician administers anesthesia, the anesthetist shall be under the medical direction of an anesthesiologist or a qualified physician or dentist. The Department has changed the language of this section, in part, to reflect that a nonphysician shall be under the overall direction of an anesthesiologist or a physician or dentist who is present in the facility.

The House Health and Human Services Committee recommended adding a provision that for pediatric patients anesthesia shall be administered by an anesthesiologist who has been trained in pediatric anesthesiology. The Department has amended this section by requiring that pediatric surgery be performed only if a pediatric anesthesiologist is present in the ASF and the physician is either board certified or has obtained a preboard certification status in pediatric surgery.

The same committee also recommended that anesthesia not be administered by nonphysicians unless an anesthesiologist or qualified physician directly supervises the nonphysician. This change was not made. This approach would contradict the current regulations for CRNAs and dentists. The Department is seeking to make these regulations as consistent as possible with those of the health profession licensing boards.

PANA, IRRC and the State Board of Nursing commented that a CRNA who administers anesthesia should be required to be under the overall direction of an anesthesiologist, physician or dentist. The Department agrees with this comment and the regulation has been changed accordingly.

Abington Surgical Center requested that the regulation be amended to be consistent with the proposed Board of Medicine regulation for medical supervision of anesthesia. This recommendation was rejected. The Department's regulations reflect existing laws and not proposed ones.

§ 555.33. Anesthesia policies and procedures.

Lehigh Anesthesia Associates recommended that CRNAs be permitted to serve as directors of anesthesia services for an ASF. The Department notes that 49 Pa. Code § 21.17(3) (relating to anesthesia) requires that the CRNAs' performance be under the overall direction of the chief or director of anesthesia services who has been defined in this subpart as an anesthesiologist or a qualified physician or dentist. Further, the director of anesthesia services of an ASF should be an independent practitioner, not one who is under the direction of someone else. Therefore, no change was made.

Lehigh Anesthesia Associates and Blank Rome Comisky & McCauley recommended the removal of the requirement for "one or more health care professionals, besides the one performing surgery, to be present and trained in the administration of anesthesia." One justification was that dentists are certified to perform both surgery and anesthesia. Under § 551.2 (relating to affected institutions), dentists and oral surgeons offices are specifically excluded unless they seek licensure or certification as ASFs. The Pennsylvania Dental Society agreed to this rule. With respect to other surgeons, the point of the requirement is that surgeons should focus on the surgery while another professional, trained to administer anesthesia, monitors the patient's condition. Therefore, the Department has amended the regulation to require that one or more additional health care professionals are present in the ASF besides the one performing surgery.

Blank Rome Comisky & McCauley recommended the removal of the requirement that the administering anesthesiologist evaluate the patient prior to discharge. The Department has amended this section to state that prior to discharge from the ASF, a patient shall be evaluated by an anesthetist, the operating room surgeon, anesthesiologist or dentist.

The Pennsylvania Medical Society suggested replacing the term "pulse oximeter" with "oxygen saturation by pulse oximetry." The Department agrees and has amended the section to follow that suggestion.

Chapter 557. Quality Assurance and Improvement

§ 557.3. Quality assurance and improvement program.

HAP suggested that data be specific to age group so that the data on pediatric patients can be segregated and analyzed separately. The Department has incorporated this suggestion into the regulation.

Chapter 559. Nursing Services

§ 559.2. Director of nursing.

Sacred Heart Hospital asked for further definition of the qualifications for the director of nursing. The only qualification is that the director of nursing be a registered nurse. This is consistent with the hospital regulations.

§ 559.3. Nursing personnel.

Sacred Heart Hospital asked for clarification of the required number of licensed and unlicensed personnel. The work group chose to leave the judgment of what constitutes an adequate number of licensed and unlicensed personnel to each ASF, given the other requirements in the regulations for personnel to supervise

anesthesia and recovery. The language in these regulations is consistent with the language in the hospital regulations.

HAP recommended that if pediatric services are provided, the regulation should require nursing staff with experience in the postoperative care of children. The Department agrees and has included such a requirement for Class B and Class C facilities. This requirement provides that the nursing staff shall have documented experience in the postoperative care of pediatric patients, when the patients are treated in the ASF.

One ambulatory surgical facility recommended eliminating the requirement for a registered nurse to be present during all hours of operation. The Department amended the regulation to require that a registered nurse be in attendance in the ASF during the hours that patients are present.

Chapter 563. Medical records

§ 563.1. Principle (medical records).

Blank Rome Comisky & McCauley and IRRC, suggested permitting combined ASF records with physician office or health system records. The Department specifically requires that the ASF medical record be onsite to promote quality assurance and to protect patient confidentiality. The Department will permit a medical information system in which the relevant part of a patient's medical record is made available to or in the ASF and the remaining part of the record could be stored elsewhere.

Chapter 565. Laboratory and Radiology Services

§ 565.15. Records.

The Pennsylvania Medical Society and Lowry Surgicenter suggested that the 24-hour requirement for inclusion of ancillary service reports is not workable and recommended that the Department continue to require that dated reports of service be made a part of the medical record in a timely manner. While the Department agrees that 24 hours may not provide adequate time, it believes that a finite period of time shall be established. The Department has restored the provision that these reports shall be made a part of the medical record in a timely manner, but requires that this period of time may not exceed 30 days.

Chapter 567. Environmental Services

§ 567.11. Operating suite equipment.

The House Health and Human Services Committee suggested adding a provision requiring the use of age appropriate equipment and supplies. The Department agrees that age appropriate equipment and supplies should be used. The Department has amended the regulation to include such a requirement.

One ambulatory surgical facility recommended that the requirement for a thoracotomy set should not be deleted as proposed. This recommendation was rejected. The physicians and nurses on the work group could not think of any circumstance in which a thoracotomy set rather than some other type of required equipment would be used.

Chapter 571. Construction Standards

§ 571.1. Minimum standards (Life Safety Code).

The House Health and Human Services Committee recommended adding a provision that requires ASF physical plants to conform to local building codes. The Department has amended the regulations to require that ASF construction be in accordance with the latest edition of

the "Guidelines for Design and Construction of Hospital and Health Care Facilities," as published by the American Institute of Architects/Academy of Architecture for Health (AIA Guidelines). Where renovation or replacement work is performed within an existing facility, all new work or additions shall comply with the requirements for new construction. These AIA Guidelines are generally recognized as the standard in health care and are used for hospitals and long-term care facilities.

The Department received several comments that the AIA Guidelines are not appropriate for certain facilities, particularly Class B facilities which perform endoscopic surgery exclusively. The Department has added language to provide that in applying the AIA Guidelines, it will consider those portions of the AIA Guidelines which establish criteria for various outpatient facilities. Those criteria include guidelines for design and construction of endoscopic suites. Additionally, the Department is willing to recognize other authoritative sources for design and construction standards of different types of ASFs. A provision has been added that, as an alternative to the AIA Guidelines, an ASF applicant may meet the construction guidelines for specified types of surgical procedures as listed in Appendix A. Organizations interested in having their standards for design and construction recognized by the Department should provide the Department with specific guidelines established by other organizations and the reason why these guidelines should be considered authoritative (for example, adoption by a Nationally recognized accrediting agency, widespread use in the industry). The Department will review these guidelines and, as appropriate, will add them to Appendix A. The Department has been provided with two sets of guidelines by the Pennsylvania Society of Gastroenterology for the construction of ASFs which will provide only endoscopic surgery. Those have been found acceptable by the Department and are included in Appendix A. Applicants should be aware that if the procedures performed at the ASF should change, other design and construction standards may become relevant. Under § 51.3(a) (relating to notification), owners of ASFs are required to provide the Department with at least 60 days advance notification of the commencement of a health care service which has not been previously offered at that facility.

Fiscal Impact

These amendments, to ensure the quality of services being provided at an ASF, will result in minimal costs to the Department. In reviewing the fiscal impact, it should be remembered that the reason for many of these amendments is the sunset of the CON Program. A proposal to construct an ASF previously had to undergo CON review prior to commencement of that activity. This review involved expenses for the Department in the employment of an entire division to process and review CON applications. With the sunset of the CON Program, staff were reassigned to various divisions, including the Bureau of Facility Licensure and Certification which should offset these identified costs.

The amendments to the Department's licensure regulations will impose additional costs on health care providers to some degree. The regulations require that medical directors of ASFs shall be board certified. The employment of these individuals could increase the cost of these services. Additionally, costs may be incurred for some minor construction/renovation, equipment or supply costs to meet new requirements. However, in most instances, the standards being adopted are those which the Department expects that the vast majority of ASFs are already meeting if they provide these services.

These costs must be compared to prior costs associated with the CON program which involved the preparation of the application, hiring health care consultants to assist with the CON process, a fee to the Department which could be as much as \$20,000 and the time and resources of the facility's staff. Indirect costs included the time which the facility had to wait until its application went through the often lengthy CON process. Although these amendments will not eliminate all of the costs which ASFs experienced under CON, the overall effect should be a reduced fiscal impact.

Paperwork Requirements

The Department will experience some increase in paperwork related to reviews in processing ASF licensure requests and additional regulatory requirements. In general, there will not be a significant paperwork burden on providers to comply with the expanded licensure requirements.

As with fiscal impact, most of these paperwork requirements should be compared with those previously required under the CON program. Applicants desiring to operate an ASF were required to submit detailed applications which could be quite lengthy and require extensive documentation.

Effective Date/Sunset Date

The amendments will become effective 30 days after publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 803(2) of the act (35 P. S. § 448.803(2)) authorizes the Department to promulgate regulations necessary to carry out the purposes and provisions of the act. Section 801.1 of the act (35 P. S. § 448.801a) provides that a purpose of the act is to promote the public health and welfare through the establishment of regulations setting minimum standards for the operation of health care facilities. The same section provides that the minimum standards are to assure safe, adequate and efficient facilities and services, and are also to promote the health, safety and adequate care of patients or residents of these facilities.

These provisions, in combination with the Department's express authority under section 806(f) of the act (35 P. S. § 806(f)) to provide for separate licensure criteria for office-based surgical facilities and for comprehensive free-standing ambulatory surgical facilities confers upon the Department the authority to employ regulations as necessary to assure quality care delivery in those facilities.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 3648 (July 19, 1997), to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In compliance with section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), the Department submitted a copy of the final-form regulations to IRRC and the Committees on March 30, 1999. In addition, the Department provided IRRC and the Committees with information pertaining to commentators and a copy of a detailed Regulatory Analysis Form prepared by the Department in

compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Health and Human Services Committee and deemed approved by the Senate Public Health and Welfare Committee. IRRC met on September 9, 1999, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Contact Person

Questions regarding these amendments may be submitted to: James T. Steele, Jr., Senior Counsel, Department of Health, P. O. Box 90, Harrisburg, PA 17108-0090, (717) 783-2500. Persons with disabilities may submit questions in alternative formats such as by audiotape, braille or by using V/TT: (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

Persons with disabilities who would like to obtain this document in an alternative format (that is, large print, audiotape, braille) should contact James Steele so that he can make the necessary arrangements.

Findings

The Department finds that:

(1) Public notice of intention to adopt these amendments has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The adoption of the final-form regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 28 Pa. Code Chapters 551, 553, 555, 557, 559, 561, 563, 565, 567, 569, 571 and 573, are amended by adding §§ 551.22, 553.25, 555.13 and Chapter 573, Appendix A by amending §§ 551.1—551.3, 551.21, 551.31, 551.33, 551.34, 551.41, 551.43, 551.53, 551.81—551.83, 551.91, 551.93, 551.111, 553.2—553.4, 553.21—553.22, 553.31, 555.3, 555.4, 555.11, 555.12, 555.21—555.24, 555.31—555.33, 555.35, 557.1—557.4, 559.2, 559.3, 561.1, 561.2, 561.13, 561.21, 561.23, 563.8, 563.12, 563.13, 565.12, 565.13, 565.15, 567.1, 567.3, 567.11, 567.32, 569.2, 569.11, 569.21, 569.33, 569.35, 571.1, 571.2, 571.11, and by deleting §§ 551.11—551.13, 551.32, 551.42, 551.121—551.123, 571.13, 573.1—573.2 to read as set forth in Annex A.

(b) The Secretary of Health shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Secretary of Health shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

(d) The Secretary of Health shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect November 22, 1999.

ROBERT S. ZIMMERMAN, Jr.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5031 (September 25, 1999).)

Fiscal Note: 10-149B. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART IV. HEALTH FACILITIES

Subpart F. AMBULATORY SURGICAL FACILITIES

CHAPTER 551. GENERAL INFORMATION

GENERAL PROVISIONS

§ 551.1. Legal base.

(a) This subpart is promulgated by the Department under Chapter 8 of the act (35 P. S. §§ 448.801—448.820), and section 2102(a) and (g) of The Administrative Code of 1929 (71 P. S. § 532(a) and (g)).

(b) The Department has the duty to promulgate regulations necessary to implement Chapter 8 of the act and to assure that its regulations and the act are enforced.

(c) The purpose of this subpart is to protect and promote the public health and welfare through the establishment and enforcement of regulations setting minimum standards in the construction, maintenance and operation of ASFs. The standards are intended to assure safe, adequate and efficient facilities and services, and to promote the health, safety and adequate care of the patients of the facilities. It is also the purpose of this subpart to assure quality health care through appropriate and nonduplicative review and inspection, with regard to the protection of the health and rights of privacy of the patients and without unreasonably interfering with the operation of the ambulatory surgical facility.

§ 551.2. Affected institutions.

(a) This subpart applies to ASFs, profit or nonprofit, operated within this Commonwealth. Only those facilities which are licensed under this subpart shall provide ambulatory surgery in this Commonwealth, except as provided in Class A facilities.

(b) This subpart does not apply to outpatient surgery performed at licensed hospitals, or to dentists' or oral surgeons' offices except to the extent the offices seek licensure as ASFs.

§ 551.3. Definitions.

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

ASF—Ambulatory surgical facility—

(i) A facility or portion thereof not located upon the premises of a hospital which provides specialty or multispecialty outpatient surgical treatment.

(ii) This does not include individual or group practice offices of private physicians or dentists, unless the offices have a distinct part used solely for outpatient surgical treatment on a regular and organized basis. For the purposes of this provision, outpatient surgical treatment means treatment to patients who do not require hospitalization, but who require constant medical supervision following the surgical procedure performed.

Act—The Health Care Facilities Act (35 P. S. §§ 448.101—448.904).

Ambulatory surgery—Surgery which is performed:

(i) On an outpatient basis in a facility which is not located in a hospital.

(ii) On patients who do not require hospitalization but who do require constant medical supervision following the surgical procedure performed and whose total length of stay does not exceed the standards in this subpart.

Anesthesia—The use of pharmaceutical agents to induce the loss of sensation. For the purpose of this chapter, the term applies when any patient, in any setting receives, for any purpose, by any route, one of the following:

(i) General, spinal or other regional anesthesia.

(ii) Sedation (with or without analgesia), for which there is a reasonable expectation that, in the manner used, will result in the loss of protective reflexes for a significant percentage of a group of patients.

Anesthesiologist—A physician licensed by the State Board of Medicine under the Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.45) who has completed an accredited residency training program in anesthesia.

Anesthetist—A generic term used to identify anesthesiologists, nurse anesthetists or dentist anesthetists.

Authenticate—To verify authorship for example by written signature, identifiable initials or computer key.

Authorized person to administer drugs and medications—In an ASF, the term includes the following:

(i) Persons who are currently licensed or certified by the Bureau of Professional and Occupational Affairs, Department of State, and whose scope of practice includes the administration of drugs.

(ii) Registered nurses who are currently licensed by the Bureau of Professional and Occupational Affairs, Department of State.

(iii) Practical nurses who have successfully passed the State Board of Nursing examination.

(iv) Practical nurses licensed by waiver in this Commonwealth who have successfully passed the United States Public Health Service Proficiency Examination.

(v) Practical nurses licensed by waiver in this Commonwealth who have successfully passed a medication course approved by the State Board of Nursing.

(vi) Student nurses of approved nursing programs who are functioning under the direct supervision of a member of the school faculty who is present in the facility.

(vii) Recent graduates of approved nursing programs who are functioning under the direct supervision of a professional nurse who is present in the facility and who possesses valid temporary practice permits. The permits shall expire if the holders of the permits fail the licensing examinations.

(viii) Physician assistants and registered nurse practitioners who are certified by the Bureau of Professional and Occupational Affairs.

Board certified—A physician licensed to practice medicine or osteopathic medicine in this Commonwealth who has successfully passed an examination and has maintained certification in the relevant specialty or subspecialty area, or both, recognized by one of the following groups:

(i) The American Board of Medical Specialties.

(ii) The American Osteopathic Association.

(iii) The foreign equivalent of either group listed in subparagraph (i) or (ii).

Classification levels—ASFs shall be classified as follows:

(i) *Class A*—A private or group practice office of practitioners where procedures performed are limited to those requiring administration of either local or topical anesthesia, or no anesthesia at all and during which reflexes are not obtunded.

(ii) *Class B*—A single-specialty or multiple-specialty facility with a distinct part used solely for ambulatory surgical treatments involving administration of sedation analgesia or dissociative drugs wherein reflexes may be obtunded; and where patients are limited to Physical Status (PS) PS-I or PS-II patients, unless the patient's PS status would not be adversely affected or sought to be remedied by the surgery. A Class B ASF may be a distinct part of a private or group practice medical or dental office so long as the requirements of this subpart are met.

(iii) *Class C*—A single-specialty or multiple-specialty facility used exclusively for the purpose of providing ambulatory surgical treatments which involve the use of a spectrum of anesthetic agents, up to and including general anesthesia and where patients are limited to physical status (PS) PS-1, PS-2 or PS-3 patients.

Classification system—A process used to identify three levels of ASFs (A, B and C) based on the procedure, patient status and anesthesia used.

Clinical privileges—Permission to independently render medical care in the ASF which is granted by the governing body under § 553.4(c) and (d) (relating to other functions).

Compliance directive—A directive issued by the Department, citing deficiencies which have come to the attention of the Department through the survey process, or by onsite inspection and directing the ASF to take corrective action as the Department directs or to submit a plan of correction.

Deficiency—A condition which exists contrary to, in violation of, or in noncompliance with this subpart.

Dentist—A person licensed by the State Board of Dentistry under The Dental Law (63 P. S. §§ 120—130b).

Dentist anesthetist—A person licensed by the State Board of Dentistry who has met the requirements for providing anesthesia care services in accordance with the regulations of that Board.

Department—The Department of Health of the Commonwealth.

Distinct part—An area which is part of a practitioner's office which is physically identifiable and where surgery is performed on a regular and organized basis.

Drug administration—An act in which a single dose of an identified drug is given to a patient.

Drug dispensing—The issuance of one or more doses of a prescribed medication under §§ 25.41—25.101.

Facilities—Buildings, equipment and supplies necessary for implementation of ASF services.

Governing body—The individuals, group or entity that has ultimate authority and responsibility for establishing policy, maintaining quality patient care and providing for organizational management and planning.

Graduate nurse—A graduate of an approved program of professional nursing practicing the profession under The Professional Nursing Law (63 P. S. §§ 221—225).

Licensed practical nurse—A person licensed to practice practical nursing under The Practical Nurse Law (63 P. S. §§ 651—667).

Medical—Pertaining to the practice of medicine, osteopathy, podiatry or dentistry.

Medical staff—The organized group of practitioners who has been appointed by the governing body of the ASF to function under §§ 555.1—555.3 (relating to principle; medical staff membership; and requirements for membership and privileges).

NFPA—The National Fire Protection Association.

New construction—New buildings, additions to existing buildings, conversion of existing buildings or portions thereof or portions of buildings undergoing alterations other than repair.

Nurse anesthetist—A registered nurse licensed by the State Board of Nursing providing anesthesia care in accordance with the requirements of the regulations of that Board.

Nurse practitioner—A person who has been certified by the State Board of Nursing and the State Board of Medicine to perform acts of medical diagnosis or prescription of medical, therapeutic or corrective measure in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth, under the Medical Practice Act of 1985 and The Professional Nursing Law.

Nursing services—Patient care aspects of nursing that are performed by registered nurses or by licensed practical nurses and ancillary nursing personnel under the direct supervision of a registered nurse.

Organized—Administratively and functionally structured to include the following:

- (i) Governing body.
- (ii) Medical staff.
- (iii) Quality assurance.
- (iv) Nursing services.
- (v) Pharmacy services.
- (vi) Medical record services.
- (vii) Laboratory and radiology services.
- (viii) Environmental services.
- (ix) Fire and safety services.

Outpatient surgical treatment—Surgical procedures performed upon patients who do not require hospitalization but who require constant medical supervision following the surgical procedure performed.

Person in charge—The individual appointed by the governing body to act in its behalf in the overall management of the ASF.

Pharmacist—A person licensed to engage in the practice of pharmacy in this Commonwealth under The Pharmacy Act (63 P. S. §§ 390.1—390.13).

Pharmacy—A place where the practice of pharmacy is conducted under The Pharmacy Act.

Physical status classifications—The evaluation of the patient's overall health as it would influence the conduct

and outcome of anesthesia or surgery, or both. Physical status shall be defined within one of five assigned classes which are:

(i) Class 1 patients have no organic, physiologic, biochemical, metabolic or psychiatric disturbance. The operation to be performed is for a local pathologic process and has no systemic effect.

(ii) Class 2 patients have a systemic disturbance which may be of a mild to moderate degree but which is either controlled or has not changed in its severity for some time.

(iii) Class 3 patients suffer from significant systemic disturbance, although the degree to which it limits the patient's functioning or causes disability may not be quantifiable.

(iv) Class 4 patients suffer from severe systemic diseases that are already life-threatening and may or may not be correctable by surgery.

(v) Class 5 patients are moribund and not expected to survive without surgery.

Physician—A doctor of medicine or osteopathy who holds a current and valid license to practice in this Commonwealth.

Physician assistant—A person who has been certified by the State Board of Medicine or the State Board of Osteopathic Medical Examiners to assist a physician or group of physicians under The Medical Practice Act of 1985 or The Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18).

Podiatrist—A person licensed by the State Board of Podiatry Examiners to practice podiatry under The Podiatry Act of 1956 (63 P. S. §§ 42.1—42.21a).

Practitioner—A licensed physician, dentist or podiatrist.

Preboard certification status—A physician licensed to practice medicine or osteopathic medicine in this Commonwealth who has completed the requirements necessary to take a certification examination offered by a specialty board recognized by the American Board of Medical Specialties, the American Osteopathic Association or the foreign equivalent of either group, and who has been eligible to take the examination for no longer than 3 years.

Premises of a hospital—Buildings, equipment and supplies licensed as a hospital to provide inpatient and outpatient services.

Professional nurse/registered nurse—A person licensed to practice professional nursing under The Professional Nursing Law.

Provider—An individual; a trust or estate; a partnership; a corporation including associations, joint stock companies, health maintenance organizations, professional health service plan corporations and insurance companies; the Commonwealth or a political subdivision or instrumentality thereof, including a municipal corporation or authority that operates an ambulatory surgical facility; and any other legal entity that operates an ambulatory surgical facility.

Secretary—The Secretary of the Department.

Surgery—The branch of medicine that diagnoses and treats diseases, disorders, malformations and injuries wholly or partially by operative procedures.

Survey—The process of evaluation or reevaluation of the compliance of an ASF with this subpart.

§§ 551.11—551.13 (Reserved).

INTERPRETATIONS

§ 551.21. Criteria for ambulatory surgery.

(a) Ambulatory surgical procedures are limited to those that do not exceed:

(1) A total of 4 hours of operating time.

(2) A total of 4 hours directly supervised recovery.

(b) The time limits in subsection (a) may be exceeded only if the patient's condition demands care or recovery beyond the 4-hour limit and the need for the additional time could not have been anticipated prior to surgery.

(c) If the surgical procedures require anesthesia, the anesthesia shall be one of the following:

(1) Local or regional anesthesia.

(2) General anesthesia of 4 hours or less duration.

(d) Surgical procedures may not be of a type that:

(1) Are associated with the risk of extensive blood loss.

(2) Require major or prolonged invasion of body cavities.

(3) Directly involve major blood vessels.

(4) Are emergency or life threatening in nature, unless no hospital is available for the procedure and the need for the surgery could not have been anticipated.

(e) In obtaining informed consent, the practitioner performing the surgery is responsible for disclosure of:

(1) The risks, benefits and alternatives associated with the anesthesia which will be administered.

(2) The risks, benefits and alternatives associated with the procedure which will be performed.

(3) The comparative risks, benefits and alternatives associated with performing the procedure in the ASF instead of in a hospital.

(f) The Department may issue interpretations of this subpart, which apply to the question of whether the performance of certain surgical procedures will require licensure as an ASF.

(g) Interpretations issued under this section do not constitute an exercise of delegated legislative power by the Department and will expressly be subject to modification by the Department in an adjudicative proceeding based upon the particular facts and circumstances relevant to a proceeding. Interpretations are not intended to be legally enforceable against a person by the Department. In issuing an adjudication, the Department may consider, but is not bound by, interpretations.

(h) Interpretations adopted by the Department under this section will be reviewed for form and legality under the Commonwealth Attorneys Act (71 P. S. §§ 732.101—732.506) and, upon approval, will be submitted to the Legislative Reference Bureau for recommended publication in the *Pennsylvania Bulletin* and *Pennsylvania Code* as a statement of policy of the Department as a part of this subpart.

§ 551.22. Criteria for performance of ambulatory surgery on pediatric patients.

In addition to the criteria in § 551.21 (relating to criteria for ambulatory surgery), the following criteria apply to the performance of ambulatory surgery on children under 18 years of age:

(1) A child under 6 months of age may not be treated in an ASF.

(2) The medical record shall include documentation that the child's primary care provider was notified by the surgeon in advance of the performance of a procedure in an ASF and that an opinion was sought from the primary care provider regarding the appropriateness of the use of the facility for the proposed procedure. When an opinion from the child's primary care provider is not obtainable, the medical record shall include documentation which explains why an opinion could not be obtained.

(3) Surgical procedures on persons older than 6 months and younger than 18 years of age shall be performed only under the following conditions:

(i) Anesthesia services shall be provided by an anesthesiologist who is a graduate of an anesthesiology residency program accredited by the accreditation council for graduate medical education or its equivalent, or by a certified registered nurse anesthetist trained in pediatric anesthesia, either of whom shall have documented demonstrated historical and continuous competence in the care of these patients.

(ii) The practitioner performing the surgery shall be either board certified by or have obtained preboard certification status with the American Board of Medical Specialties, the American Osteopathic Board of Surgery, the American Board of Podiatric Surgery or the American Board of Oral and Maxillofacial Surgery.

(4) A medical professional who has successfully completed a course in advanced pediatric life support offered by the American Academy of Pediatrics and either the American College of Emergency Physicians or the American Heart Association shall be present in the facility.

APPLICATION AND AUTHORIZATION TO OPERATE AN ASF

§ 551.31. Licensure.

(a) A Class A ASF shall meet the following criteria:

(1) A license is not required for the operation of a Class A ASF. The facility shall be accredited by the Accreditation Association for Ambulatory Health Care, the Joint Commission on the Accreditation of Health Care Organizations, the American Association for the Accreditation of Ambulatory Surgical Facilities or another Nationally recognized accrediting agency acknowledged by the Medicare Program in order to be identified as providing ambulatory surgery.

(2) A Class A ASF shall register with the Department and shall forward a copy of its accreditation survey to the Department.

(3) The Class A registration form shall request the following information, which shall also be provided to the Department by the Class A ASF on an annual basis.

(i) A list of operative procedures proposed to be performed at the facility and the ages of the patients to be served.

(ii) The type of anesthetic proposed to be used for each operative procedure.

(iii) The facility's current accreditation survey and the designation of accreditation status by the Nationally recognized accrediting agency.

(iv) Other information the Department deems pertinent to registration requirements.

(b) A license shall be obtained to operate a freestanding Class B or Class C ASF.

(c) An ASF license shall designate the licensed facility as either a Class B or Class C.

(d) An applicant for a license to operate an ASF shall request licensure by the Department by means of written communication which sets forth:

(1) A list of operative procedures proposed to be performed at the facility and the ages of the patients to be served.

(2) The highest level of anesthetic proposed to be used for each proposed operative procedure.

(3) The highest PS patient level proposed to receive ambulatory surgery at the facility.

(4) A statement from the applicant which may be accompanied by a written opinion from a Nationally recognized accrediting body stating the most appropriate facility Class (B or C).

(e) If a facility desires to change its classification level from a Class B enterprise to a Class C enterprise, the facility shall request and obtain a license prior to providing services to ASF Class III or PS-III patients.

(f) The Department may enter and inspect an ASF (Class A, B or C), at any time, announced or unannounced, to investigate any complaints. The Department may mandate closure of an ASF that the Department determines is providing substandard care or for any other lawful reason.

§ 551.32. (Reserved).

§ 551.33. Survey.

The Department will conduct a survey to insure that the applicant is in compliance with this subpart. The survey will include an onsite inspection and review of written approvals submitted to the Department by regulatory agencies responsible for building, electric, fire and environmental safety. The Department may designate Nationally recognized accrediting agencies whose standards are at least as stringent as the Department's to perform some or all aspects of licensure surveys.

§ 551.34. Licensure process.

(a) An application for the appropriate license to operate an ASF shall be made in accordance with section 807 of the act (35 P. S. § 448.807).

(b) The application form for a license to operate an ASF shall be obtained from the Department of Health, Division of Acute and Ambulatory Care Facilities, Post Office Box 90, Harrisburg, Pennsylvania 17108.

(c) Applications for renewal of a license shall be made annually on forms obtained from the Department.

(d) Applications or renewal forms shall be accompanied by a fee of \$250.

CONTINUING OPERATIONS

§ 551.41. Policy.

The Department will issue a license valid for 1 year to an ASF which is in compliance with this subpart.

§ 551.42. (Reserved).

§ 551.43. Void license.

(a) The license of an ASF becomes automatically void when one of the following occurs:

(1) The license term of 1 year expires.

(2) The ASF substantially changes its name or location, in which case a new license will be automatically issued upon application by an ASF if the ASF is otherwise in compliance with this subpart.

(b) If the ASF locates or relocates services at a site other than the current site or a site contiguous thereto, the ASF shall notify the Department 30 days prior to the change so that the Department may determine if a new license is necessary.

INSPECTION AND SURVEY ACTIVITIES

§ 551.53. Presurvey preparation.

Prior to an annual survey site visit of an ASF by the Department, the Department may request from the ASF documents or records of the ASF, or other information necessary for the Department to prepare for the site visit. The ASF shall provide the information requested, including a declarative statement that sets forth the information requested in § 551.31 (relating to licensure) as follows:

- (1) A list of operative procedures proposed to be performed at the facility.
- (2) The highest level of anesthetic proposed to be used for each proposed operative procedure.
- (3) The highest PS patient level proposed to receive outpatient surgical treatments at the facility.

ISSUANCE OF LICENSE

§ 551.81. Principle.

The Department will issue an ASF license to a facility which complies with this subpart. The license will reflect the regular, provisional or limited status and the classification assigned to the ASF. The license applies only to the designated facility.

§ 551.82. Regular license.

(a) The Department will issue a regular license to an ASF when that ASF is in compliance with section 808 of the act (35 P. S. § 448.808) and is in full or substantial compliance with this subpart.

(b) As used in subsection (a) "substantial compliance" means:

- (1) Deficiencies are, individually and in combined effect, of a minor nature so that neither the deficiencies nor efforts toward their correction will do one of the following:
 - (i) Interfere with or adversely affect normal ASF operations.
 - (ii) Adversely affect a patient's health or safety.
 - (iii) Exceed the assigned classification of the ASF.
- (2) The ASF has adopted a plan of correction approved by the Department.

§ 551.83. Provisional license.

- (a) The Department may issue a provisional license if:
 - (1) There are numerous deficiencies or a serious specific deficiency in compliance with applicable statutes, ordinances or regulations.
 - (2) The ASF is taking appropriate steps to correct the deficiencies in accordance with a plan of correction submitted by the ASF and agreed upon by the Department.
 - (3) There is no cyclical pattern of deficiencies over a period of 2 or more years. A cyclical pattern is one where

an ASF is alternately in and out of substantial or full compliance, which is corrected only when actively supervised by the Department.

(b) A provisional license is valid for a specific time period of no more than 6 months.

(c) A provisional license may be renewed no more than three times.

REFUSAL OR REVOCATION

§ 551.91. Grounds.

(a) The Department may refuse to issue a license for one or more of the following reasons:

- (1) The health care provider is not a responsible person.
- (2) The place to be used as an ASF is not adequately constructed, equipped, maintained and operated to safely and efficiently render the services offered.
- (3) The ASF does not provide safe and efficient services which are adequate for the care, treatment and comfort of the patients or residents of the facility.
- (4) There is not substantial compliance with this subpart.

(b) The Department may refuse to renew a license, or may suspend or revoke or limit a license for all or a portion of an ASF, or for a particular service offered by an ASF, or may suspend admissions for any of the following reasons:

- (1) Serious violation of or noncompliance with the act or with this subpart except when the ASF is in compliance or substantial compliance as defined in § 551.82 (relating to regular license) or otherwise meets the conditions in § 551.83 (relating to provisional license). A serious violation is one which poses a significant threat to the health of a patient.
- (2) Failure to submit a plan of correction when required to do so, or failure, by the holder of a provisional license, to correct a deficiency under a plan of correction, unless the Department approves an extension or modification of the plan of correction.
- (3) Incompetence, negligence or misconduct in operating the ASF, or in providing services to patients.
- (4) Fraud or deceit in obtaining or attempting to obtain a license.
- (5) Lending, borrowing or using the license of another ASF.
- (6) Knowingly aiding or abetting the improper granting of a license.
- (7) Mistreating or abusing individuals cared for by the ASF.
- (8) The existence of a cyclical pattern of deficiencies over a period of 2 or more years. A cyclical pattern means an ASF is alternately in and out of full or substantial compliance, which is corrected only when actively supervised by the Department.
- (9) Serious violation of the laws relating to Medical Assistance or Medicare reimbursement.
- (10) Providing services exceeding the scope of the classification assigned in the license.

§ 551.93. Notice.

(a) If the Department proposes to revoke, modify, limit or refuse to issue or renew a license or to issue a

provisional license, or to suspend admissions or to levy a civil penalty against the ASF, it will give written notice to the ASF by certified mail.

(b) Written notice will specify the reasons for the proposed action of the Department and will notify the ASF of its right to a hearing. The order will specify the time within which a request of the ASF for a hearing shall be filed with the Health Policy Board.

HEARINGS

§ 551.111. Hearings relating to licensure.

Hearings relating to licensure, including the issuance of a provisional license, or the suspension of admissions, will be conducted by the Health Policy Board, under 37 Pa. Code Chapter 197 (relating to practice and procedure).

§ 551.121. (Reserved).

§ 551.122. (Reserved).

§ 551.123. (Reserved).

CHAPTER 553. OWNERSHIP, GOVERNANCE AND MANAGEMENT

GOVERNING BODY

§ 553.2. Ownership.

(a) The owner of the ASF may be an individual, partnership, association, a corporation or a combination thereof.

(b) A complete list of the names and addresses of owners, directors, officers and managers shall be submitted with the application.

(c) Owners shall be considered any person who has a direct or indirect equity interest in the facility of 5% or more, including shareholders and partners.

(d) A physically noncontiguous branch of the ASF shall meet the requirements for licensure and shall be independently licensed.

§ 553.3. Governing body responsibilities.

Governing body responsibilities include:

(1) Conforming to applicable Federal, State and local law.

(2) Determining the goals and objectives of the ASF.

(3) Assuring that facilities and personnel are adequate and appropriate to carry out the goals and objectives.

(4) Establishing an organizational structure and specifying functional relationships among the various components of the ASF.

(5) Adopting bylaws or similar rules and regulations for the orderly development and management of the ASF, which:

(i) Describe the authority delegated to the person in charge and to the medical staff.

(ii) Require the governing body to review and approve the bylaws, or similar rules and regulations, of the medical staff.

(6) Adopting policies or procedures necessary for the orderly conduct of the ASF.

(7) Assuring that the quality of care is evaluated and that identified problems are appropriately addressed.

(8) Establishing personnel policies and practices which adequately support sound patient care to include the following:

(i) Require the employment of personnel with qualifications commensurate with a job's responsibilities and authority, including appropriate licensure and certification.

(ii) Applicants for positions requiring a licensed person shall be hired only after obtaining verification of their licenses, records of education and written references.

(iii) Personnel records shall include current information relative to periodic work performance evaluations.

(iv) Compliance with Occupational Safety and Health Administration (OSHA) Universal Precautions for prevention of transmission of diseases.

(v) Written job descriptions shall exist for each type of job in the ASF.

(vi) Compliance with Federal and State regulations including, The Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213), civil rights and OSHA regulations.

(9) Reviewing legal and ethical matters concerning the ASF including the reports and disposition of unusual incidents.

(10) Maintaining effective communication throughout the ASF.

(11) Establishing a system of financial management and accountability that includes an audit appropriate for the ASF.

(12) Establishing a procedure for implementing, disseminating and enforcing a patient's bill of rights in compliance with § 553.13 (relating to procedures for distribution).

(13) Approving major contracts or arrangements affecting the medical care provided under its auspices, including those concerning:

(i) The employment for contractual arrangements with practitioners and others providing direct patient care.

(ii) The provision of all treatment related services including, radiology, medical laboratory, pathology, anesthesia and pharmaceutical services.

(iii) The provision of care by other health care organizations.

(iv) The provision of education to students and post-graduate trainees.

(14) Formulating long-range plans in accordance with the goals and objectives of the ASF.

(15) Operating the ASF without limitation because of age, race, creed, color, sex, national origin, religion, handicap or disability.

(16) Assuring that at least one medical professional in the facility when patients are present is currently and on an ongoing basis certified in advanced cardiac life support, or its successor. If a pediatric patient is present in the facility, the certification of the medical professional shall be in advanced pediatric life support as defined in § 551.22(A)(4) (relating to criteria for performance of ambulatory surgery on pediatric patients).

§ 553.4. Other functions.

(a) The governing body shall meet at least annually and keep minutes or other records necessary for the orderly conduct of the ASF.

(b) If the governing body elects, appoints or employs officers and administrators to carry out its directives, the authority, responsibility and functions of the positions shall be defined.

(c) If the governing body is comprised of two or more members, and if the majority of those members are practitioners, the governing body, either directly or by delegation, shall make—based on evidence of the education, training and current competence—initial appointments, reappointments and assignment or curtailment of clinical privileges of the practitioners.

(d) If the governing body is comprised of only one member, or if a majority of the members of the governing body are not practitioners, the ASF bylaws or similar rules and regulations shall specify a procedure for establishing medical review by practitioners for the purpose of recommending to the governing body for its approval based on evidence of the education, training and current competence—initial appointments, reappointments and assignment or curtailment of clinical privileges of the practitioners.

(e) If students and postgraduate trainees are present in the facility, their role and functions shall be defined.

(f) The governing body shall ensure that personnel are provided with continuing education which is relevant to their responsibilities within the organization.

(g) The governing body shall ensure that the licensee provides to the Department, the documents under § 551.53 (relating to presurvey preparation).

(h) The governing body shall appoint a medical director who shall be board certified by an American Board of Medical Specialties recognized board or the dental, podiatric or osteopathic equivalent. The governing body may appoint an interim director during the period of time between the departure of a director and the selection of a new director.

(1) The interim director shall be a physician who is able to demonstrate qualifications acceptable to the medical staff of the ASF and to the Department.

(2) If the interim director is not board certified, the Department will specify the maximum period of time for which the interim director may serve.

ADMISSION, TRANSFER AND DISCHARGE

§ 553.21. Principle.

(a) The ASF shall have written policies for the admission, discharge, transfer and proper referral of patients.

(b) The ASF may not provide beds or other accommodations for an overnight stay of patients.

(c) A patient shall be discharged in a conscious and coherent condition and able to maintain vital life functions or shall be transferred to a hospital.

(d) A patient shall be discharged only with appropriate discharge instructions under § 555.24 (relating to postoperative care).

§ 553.22. Admission criteria.

The governing body, with the advice of and in conjunction with the medical staff, shall establish medical criteria for admissions under § 555.22(a) (relating to preoperative care). Medical criteria shall be congruent with the assigned ASF class level stated on the facility license.

§ 553.25. Discharge criteria.

A patient may only be discharged from an ASF if the following physical status criteria are met:

(1) *Vital signs.* Blood pressure, heart rate, temperature and respiratory rate are within the normal range for the patient's age or at preoperative levels for that patient.

(2) *Activity.* The patient has regained preoperative mobility without assistance or syncope, or function at the patient's usual level considering limitations imposed by the surgical procedure.

(3) *Mental status.* The patient is awake, alert or functions at the patient's preoperative mental status.

(4) *Pain.* The patient's pain can be effectively controlled with medication.

(5) *Bleeding.* Bleeding is controlled and consistent with that expected from the surgical procedure.

(6) *Nausea/vomiting.* Minimal nausea or vomiting is controlled and consistent with that expected from the surgical procedure.

MANAGEMENT AND ADMINISTRATION OF OPERATIONS

§ 553.31. Administrative responsibilities.

(a) A full time person in charge shall be appointed who has authority and responsibility for the operation of the ASF at all times. Qualifications, authority, responsibilities and duties of the person in charge shall be defined in a written statement adopted by the governing body.

(b) Administrative policies, procedures and controls shall be established, documented and implemented to assure the orderly and efficient management of the ASF.

CHAPTER 555. MEDICAL STAFF MEDICAL STAFF

§ 555.3. Requirements for membership and privileges.

(a) To receive favorable recommendation for appointment, or reappointment, members of the medical staff shall always act in a manner consistent with the highest ethical standards and levels of professional competence.

(b) Privileges granted shall reflect the results of peer review or utilization review programs, or both, specific to ambulatory surgery.

(c) Privileges granted shall be commensurate with an individual's qualifications, experience and present capabilities.

(d) Granting of clinical privileges shall follow established policies and procedures in the bylaws or similar rules and regulations. The procedures shall provide the following:

(1) A written record of the application, which includes the scope of privileges sought and granted. The delineation "clinical privileges" shall address the administration of anesthesia.

(2) A review, summarized on record with appropriate documentation, of the qualifications of the applicant.

(e) Reappraisal and reappointment shall be required of every member of the medical staff at regular intervals no longer than every 2 years.

(f) The governing body shall request and consider reports from the National Practitioner Data Bank on each practitioner who requests privileges.

§ 555.4. Clinical activities and duties of physician assistants and certified registered nurse practitioners.

(a) If the ASF assigns patient care responsibilities to physician assistants and nurse practitioners, the medical staff shall have established policies and procedures approved by the governing body, for overseeing and evaluating their clinical activities. The training, experience and demonstrated current competence of physician assistants and nurse practitioners shall be commensurate with their duties and responsibilities.

(b) Physician assistants shall perform within the limits established by the medical staff and consistent with the Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.45) and the Osteopathic Medical Practice Act (63 P. S. §§ 261—271). Certified registered nurse practitioners shall perform within the limits established by the medical staff and consistent with the Professional Nursing Law (63 P. S. §§ 211—225.5) and the joint regulations of the State Boards of Medicine and Nursing.

(c) Physician assistants and nurse practitioners shall be licensed or certified as applicable.

MEDICAL ORDERS

§ 555.11. Written orders.

(a) Medication or treatment shall be administered by authorized persons to administer drugs and medications only upon written and signed orders of a practitioner acting within the scope of the practitioner's license.

(b) Physician assistants and certified registered nurse practitioners may write orders for medication or treatment in accordance with their legally authorized scope of practice and policies and procedures of the ASF.

(c) Written orders may be issued by facsimile transmission.

§ 555.12. Oral orders.

Oral orders for medication or treatment shall be accepted only under urgent circumstances when it is impractical for the orders to be given in written manner by the responsible practitioner. Oral orders shall be administered in accordance with § 555.13 (relating to administration of drugs) only by personnel qualified by their professional license or certification issued by the Commonwealth and according to medical staff bylaws or rules, who shall document the orders in the proper place in the medical record of the patient. The order shall include the date, time and full signature of the person taking the order and shall be countersigned by a practitioner within 48 hours of the order. If the practitioner is not the attending physician, the practitioner shall be authorized by the attending physician and shall be knowledgeable about the patient's condition. Countersignatures may be received by facsimile transmission.

§ 555.13. Administration of drugs.

Drugs shall be administered only upon the proper order of a practitioner acting within the scope of the practitioner's license and authorized according to medical staff bylaws, rules and regulations. Drugs shall be administered directly by a practitioner qualified according to medical staff bylaws, rules and regulations or by a professional nurse or by a licensed practical nurse with pharmacy training. Physician assistants and certified registered nurse practitioners shall be permitted to administer drugs within their authorized scope of practice. Further policies on the administration of drugs shall be

established by the medical staff in conjunction with pharmaceutical services or personnel.

SURGICAL SERVICES

§ 555.21. Surgical procedures.

Procedures performed in the ASF are limited to procedures that are approved by the governing body, upon the recommendation of the medical staff and congruent with ASF classification as stated on its ASF license.

§ 555.22. Preoperative care.

(a) Pertinent medical histories and physical examinations, and supplemental information regarding drug sensitivities shall be documented the day of surgery or one of the following:

(1) If medical evaluation, examination and referral are made from a private practitioner's office, hospital or clinic, pertinent records thereof shall be available and made part of the patient's clinical record at the time the patient is registered and admitted to the ASF. This information is considered valid only if the evaluation was performed no more than 30 days prior to date of surgery.

(2) A practitioner shall examine the patient immediately before surgery to evaluate the risk of anesthesia and of the procedure to be performed. The information shall be clearly documented in the medical record.

(b) A written statement indicating informed consent, obtained by the practitioner, and signed by the patient, or responsible person, for the performance of the specific procedures shall be procured and made part of the patient's clinical record. It shall contain a statement which evidences the appropriateness of the proposed surgery, as well as any alternative treatments discussed with the patient. It shall also identify any practitioner who will participate in the surgery.

(c) Written instructions for preoperative procedures, which have been approved by the medical staff, shall be given to the patient or responsible person, and shall include:

(1) Applicable restrictions upon food and drink before surgery.

(2) Special preparations to be made by the patient.

(3) The required proximity of the patient to the ASF for a specific time following surgery, if applicable.

(4) An understanding that the patient may require admission to the hospital in the event of medical need.

(5) Upon discharge of a patient who has received sedation or general anesthesia, a responsible person shall be available to escort the patient home. With respect to patients who receive local or regional anesthesia, a medical decision shall be made regarding whether these patients require a responsible person to escort them home.

(d) Preoperative diagnostic studies, if performed, shall be evaluated, annotated, signed and entered into the patient's medical record before surgery.

(e) Prior to the administration of anesthesia, it is the responsibility of the primary operating surgeon and the person administering anesthesia to properly identify the patient and the procedure to be performed and to document this identification in the patient's medical record. This procedure shall be in written policies designating the mechanism to be used to identify each surgical patient.

§ 555.23. Operative care.

(a) Approved surgical procedures shall be performed only by a qualified physician, dentist or podiatrist within the limits of the practitioner's defined specific practice privileges. Physician assistants and certified registered nurse practitioners may be permitted to assist in the performance of surgical procedures in accordance with their legally authorized scope of practice and the policies and procedures of the ASF.

(b) Tissues and exudates removed during a surgical procedure shall be properly labeled and sent to a laboratory for examination by a pathologist. The specimen shall be accompanied by pertinent clinical information, including its source and the preoperative and postoperative surgical diagnosis. The pathologist's signed report of the examination shall be made a part of the patient's medical record. Certain tissues and exudates may be exempt from laboratory examination. The exemptions shall be those that are consistent with current medical practices and are in writing and approved by the governing body.

(c) An ASF shall be prepared to initiate immediate onsite resuscitation or other appropriate response to an emergency which may be associated with procedures performed there.

(d) The ASF shall have an effective procedure for the immediate transfer to a hospital of patients requiring emergency medical care beyond the capabilities of the ASF.

(e) The ASF shall have a written transfer agreement with a hospital which has emergency and surgical services available, or physicians performing surgery in the ASF shall have admitting privileges at a hospital in close proximity to the ASF, to which patients may be transferred.

(f) There shall be a written agreement in effect with an ambulance service staffed by certified EMT personnel, for the safe transfer of a patient to a hospital in an emergency situation, or as the need arises.

§ 555.24. Postoperative care.

(a) The findings and techniques of an operation shall be accurately and completely written or dictated immediately after the procedure by the practitioner medical staff member who performed the operation. If a physician assistant or certified registered nurse practitioner performed part of the operation, the findings and techniques of the procedure shall be accurately recorded and the report shall be countersigned by the medical staff member. This description shall become a part of the patient's medical record.

(b) A patient who has received anesthesia shall be observed in the facility by a registered nurse, physician assistant or a practitioner for a period of time which is sufficient to ensure that no immediate postoperative complications are present.

(c) Patients in whom a complication is known or suspected to have occurred during or after the performance of a surgical procedure shall be informed of the condition and arrangements made for treatment of the complication. In the event of admission to an inpatient facility, a summary of care given in the ASF concerning the suspected complication shall accompany the patient.

(d) A medical professional certified in advanced cardiac life support shall be present until patients operated on that day have been discharged from the facility. If a patient receives general anesthesia, regional anesthesia

or IV sedation, an anesthetist shall remain present until that patient has been discharged from the facility.

(e) Patients shall be discharged in the company of a responsible person, if one is deemed to be necessary under § 555.22(c)(5) (relating to preoperative care).

(f) Protocols approved by the medical staff shall be established for instructing patients in self-care after surgery including written instructions which, at a minimum, include the following:

(1) The symptoms of complications associated with procedures performed.

(2) An explanation of prescribed drug regime including directions for use of medications.

(3) The limitations and restrictions on activities of the patient, if necessary.

(4) A specific telephone number to be used by the patient, if a complication or question arises.

(5) A date for follow-up or return visit after the performance of the surgical procedure.

(6) Instructions on the care of dressing and wounds.

(7) Instructions on dietary limitations.

(g) Patients shall be discharged only on the written signed order of a practitioner.

ANESTHESIA SERVICES

§ 555.31. Principle.

(a) Anesthesia services provided in the facility are limited to those techniques that are approved by the governing body upon the recommendation of qualified medical staff. They shall be limited to those techniques appropriate to the assigned classification per ASF license.

(b) The governing body shall define the degree of supervision required and the scope of responsibilities delegated to anesthesiologists, certified registered nurse anesthetists and dentist anesthetists, as well as the corresponding responsibilities of supervising physicians.

§ 555.32. Administration of anesthesia.

(a) Anesthetics shall be administered by anesthesiologists and certified registered nurse anesthetists and dentist anesthetists, or practitioners as defined in § 551.3 (relating to definitions).

(b) If a nonphysician administers the anesthesia, the anesthetist shall be under the overall direction of an anesthesiologist or a physician or dentist who is present in the ASF.

(c) The Director of Anesthesia Services shall be responsible for designating the physician or dentist who will be responsible for the overall direction of the anesthetist.

§ 555.33. Anesthesia policies and procedures.

(a) In ASFs where an anesthesiologist is present, the anesthesiologist shall be designated the Director of Anesthesia Services and shall be responsible for directing the anesthesia services and establishing the general policies and procedures for the administration of anesthesia in the ASF which shall be approved by the governing body.

(b) In ASFs where there is no anesthesiologist, the governing body shall designate a physician or dentist to function as the Director of Anesthesia Services, who shall be responsible for directing the anesthesia services and establishing the general policies and procedures for the administration of anesthesia in the ASF which shall be approved by the governing body.

(c) Policies and procedures shall be developed for anesthesia services and shall include the following:

- (1) Education, training and supervision of personnel.
- (2) Responsibilities of nonphysician anesthetists.
- (3) Responsibilities of supervising physicians or dentists.

(d) Anesthesia procedures shall provide at least the following:

(1) A patient requiring anesthesia shall have a pre-anesthesia evaluation by a practitioner, with appropriate documentation of pertinent information regarding the choice of anesthesia.

(2) A review and documentation shall be made of the condition of the patient immediately prior to induction of anesthesia, including pertinent laboratory findings, time of administration and dosage of preanesthesia medications.

(3) Prior to beginning the administration of anesthesia, the anesthetist shall check equipment to be used in administration of anesthetic agents. An anesthetic gas machine in anesthetizing areas shall have a pin-index safety system.

(4) Following the procedure for which anesthesia was administered, the anesthetist shall remain with the patient as long as necessary to insure safe transport to the recovery area and shall advise personnel responsible for postanesthetic care of the condition of the patient.

(5) A patient receiving anesthesia shall have an anesthetic record maintained. This shall include a record of vital signs and all events taking place during the induction of, maintenance of and emergence from anesthesia, including the dosage and duration of anesthetic agents, other drugs and intravenous fluids.

(6) Intraoperative physiologic monitoring shall include the following at a minimum:

- (i) The use of oxygen saturation by pulse oximetry.
- (ii) The use of End Tidal CO₂ monitoring during endotracheal anesthesia.
- (iii) The use of EKG monitoring.
- (iv) The use of blood pressure monitoring.

(7) A patient may not receive general anesthesia unless one or more additional health care professionals besides the one performing the surgery, are present, one of whom is trained in the administration of anesthesia.

(8) Before discharge from the ASF, a patient shall be evaluated for proper anesthesia recovery by an anesthetist, the operating room surgeon, anesthesiologist or dentist. Depending on the type of anesthesia and length of surgery, the postoperative check shall include at least the following:

- (i) Level of activity.
- (ii) Respirations.
- (iii) Blood pressure.
- (iv) Level of consciousness.
- (v) Oxygen saturation by pulse oximetry.

§ 555.35. Safety regulations.

(a) Appropriate precautions shall be taken to ensure the safe administration of anesthetic and other medical gas agents, in accordance with the latest edition of NFPA Code 56G, and other applicable NFPA Codes as required.

(b) The machines used for anesthesia shall have at least one annual function testing by technicians with appropriate training and a log of this testing and outcomes shall be maintained.

CHAPTER 557. QUALITY ASSURANCE AND IMPROVEMENT

§ 557.1. Policy.

The ASF, with active participation of the medical and nursing staff, shall conduct an ongoing quality assurance and improvement program designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care and resolve identified problems.

§ 557.2. Plan.

(a) The ASF shall have a written plan for the quality assurance and improvement program that describes the program's objectives, organization, scope and mechanisms for overseeing the effectiveness of monitoring, evaluation and problem solving activities.

(b) The written plan shall be endorsed by the governing body and the medical director who are responsible for establishment and direction of the program and which indicates the staff person responsible for implementation of the program.

(c) The plan shall emphasize the ongoing nature of the quality assurance program and the comprehensiveness of the scope of the program which shall include monitoring and evaluation of the following:

- (1) Medical staff functions including:
 - (i) Peer-based review of clinical performance of individuals with clinical privileges.
 - (ii) Surgical case and tissue review.
- (2) Anesthesia services.
- (3) Nursing services.
- (4) Pharmaceutical services.
- (5) Pathology and radiology services.
- (6) Infection control procedures.
- (7) Procedures performed in the ASF and their necessity.
- (8) Reports of accidents, injuries and safety hazards.
- (d) The plan shall include participation of practitioners and other health care personnel.

§ 557.3. The quality assurance and improvement program.

(a) The quality assurance program shall include monitoring and evaluation of data collected, based on defined criteria that reflect current knowledge and clinical experience and relate to the care provided by the service. Sources of data include the medical records, incident reports, infection control records and patient complaints. The medical record shall contain sufficient data to support the diagnosis and determine that the procedures are appropriate to the diagnosis. Facilities that treat pediatric patients shall segregate data regarding these patients.

(b) The quality assurance program shall provide for the identification of problems and actions taken—through the monitoring and evaluation process—which improve the quality of patient care.

(c) The frequency, severity and source of suspected problems or concerns are evaluated by practitioners and nurses.

(d) Measures shall be implemented to resolve important problems or concerns identified. The results of these corrective measures shall be monitored to assure that the problem has been satisfactorily resolved. Measures which may be taken include:

- (1) Changes in policies and procedures.
- (2) Staffing and assignment changes.
- (3) Appropriate education and training.
- (4) Adjustments in clinical privileges.
- (5) Changes in equipment or physical plant.

(e) The program shall include a mechanism to assure that activities are documented and reports of the quality assurance activities are brought to the attention of the governing body. There shall be a periodic reappraisal of the program.

(f) The quality assurance program shall include the establishment of a quality assurance committee.

§ 557.4. Quality assurance and improvement committee.

(a) The Committee shall consist of the following:

- (1) A practitioner who is not an owner.
- (2) A representative of administration.
- (3) A registered nurse.
- (4) Other health care personnel, as appropriate.

(b) Committee functions shall include:

- (1) Evaluating data submitted as part of the quality assurance program.
- (2) Reviewing credentials.
- (3) Reviewing tissue examination reports.
- (4) Reviewing infection control program.
- (5) Reviewing the standards of practice in all specific areas of the ASF.

(c) Committee records of the activities shall include:

- (1) Reports made to the governing body.
- (2) Minutes of committee meetings including date, time, persons attending, description and results of cases reviewed and recommendations made by the committee.
- (3) Corrective actions taken including appropriate orientation, training or education programs necessary to correct deficiencies which are uncovered as a result of the quality assurance program.

CHAPTER 559. NURSING SERVICES

§ 559.2. Director of nursing.

The director of nursing shall be currently licensed as a registered nurse in this Commonwealth and be responsible and accountable to the person in charge of the ASF for:

- (1) Delivery of nursing services to patients.
- (2) Development and maintenance of nursing service goals and objectives, standards of nursing practice, nursing policy and procedure manuals and written job descriptions for each level of personnel.
- (3) Coordination of nursing services with other patient services.
- (4) Establishment of a means of assessing the nursing care needs of patients and staffing to meet those needs.
- (5) Staff development.

§ 559.3. Nursing personnel.

(a) An adequate number of licensed and assistive personnel shall be on duty to assure that staffing levels meet the total nursing needs of patients based on the number of patients in the facility and their individual nursing care needs. Class B and Class C ASFS which provide surgical services to pediatric patients shall have nursing staff with documented experience in the postoperative care of these patients.

(b) At least one registered nurse shall be in attendance during the hours patients are present. Nursing personnel shall be assigned to duties consistent with their education, training and experience.

(c) Registered professional nurses or licensed practical nurses practicing at an ASF shall be licensed to practice in this Commonwealth. There shall be a procedure to verify the licensure status of the nurses.

CHAPTER 561. PHARMACEUTICAL SERVICES

GENERAL PROVISIONS

§ 561.1. Drugs and biologicals.

The ASF shall provide drugs and biologicals in a safe and effective manner to meet the needs of the patients and to adequately support the organization's clinical capabilities commensurate with their licensed classification, in accordance with accepted ethical and professional practice and applicable State and Federal law, including the Pharmacy Act (63 P. S. §§ 390.1—390.13), 49 Pa. Code Chapter 27 (relating to State Board of Pharmacy), The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) and Chapter 25 (relating to controlled substances, drugs, devices and cosmetics).

§ 561.2. Pharmaceutical service.

(a) Pharmaceutical services shall be supervised by a physician or dentist who is qualified to assume professional, organization and administrative responsibility for the quality of services rendered. Practitioners may dispense drugs only to the patients who are in their care.

(b) A pharmacy owned and operated by the ASF shall be supervised by a licensed pharmacist.

(c) Contracted pharmaceutical services shall be provided in accordance with the same ethical and professional practices and legal requirements that would be required if these services are provided directly by the organization.

PHARMACEUTICAL FACILITIES

§ 561.13. Storage.

The area in the ASF where drugs are stored shall be periodically checked by the responsible pharmacist or practitioner and proper logs maintained.

POLICIES AND PROCEDURES

§ 561.21. Principle.

The scope of the pharmaceutical service shall be consistent with the medication needs of the patients and congruent with the licensed classification of the ASF. The pharmaceutical policies shall include a program for the control and accountability of drug products throughout the ASF. If drugs are used for an experimental purpose, the use thereof shall be approved by an Institutional Review Board (IRB) or an IRB shall waive review and proper consent for use shall be obtained.

§ 561.23. Use of controlled substances and other drugs.

There shall be policies and procedures developed and approved by the medical staff which establish controls governing the use of controlled substances and other drugs, including sedatives, anticoagulants, antibiotics, oxytoxics and corticosteroids. Policies shall be established regarding written orders for appropriate dosage of all drugs.

CHAPTER 563. MEDICAL RECORDS

§ 563.8. Automation or computerization of medical records.

Nothing in this subpart prohibits the use of automation or computerization in the medical records service, if the provisions in this chapter are met and the information is readily available for use in patient care. Innovations in medical record formats, compilation and data retrieval are specifically encouraged.

§ 563.12. Form and content of record.

The ASF shall maintain a separate medical record for each patient. Every record shall be accurate, legible and promptly completed. Patient medical records shall be constructed to stand alone and be easily identified as ASF records. Medical records shall include at least the following:

- (1) Patient identification.
- (2) Pertinent medical history and results of physical examination.
- (3) Preoperative diagnostic studies—entered before surgery—if performed.
- (4) The presence or absence of allergies and untoward drug reactions recorded in a prominent and uniform location in all patient charts on a current basis.
- (5) Documentation of properly executed, informed patient consent.
- (6) Entries related to anesthesia administration.
- (7) Findings and techniques of the operation, including a pathologist report on tissue removed during surgery.
- (8) Notes by authorized staff members and individuals who have been granted clinical privileges, nurses' notes and entries by other professional personnel.
- (9) Written and verbal disposition recommendations and instructions given to the patient.
- (10) Significant medical advice given to a patient by telephone.
- (11) Discharge summary including discharge diagnosis.

§ 563.13. Entries.

- (a) Entries in the record shall be dated and authenticated by the person making the entry.
- (b) Symbols and abbreviations may be used only when they have been approved by the medical staff and when a legend exists to explain them.
- (c) A single signature on the fact sheet of a record does not suffice to authenticate the entire record. Each entry shall be individually authenticated.
- (d) Notation of unusual incidents shall be entered in the medical record.

- (e) Necessary documentation on the patient's medical record as specified in § 563.12 (relating to form and content of record) shall be completed in a timely manner not to exceed 30 days.

CHAPTER 565. LABORATORY AND RADIOLOGY SERVICES

RADIOLOGY SERVICES

§ 565.12. Radiology service policy.

- (a) The service shall be provided by contract or directly by the ASF.

- (b) Applicable provisions of the Department of Environmental Protection regulations in 25 Pa. Code Chapters 221—233 and 25 Pa. Code §§ 235.1 and 235.11—235.15, and the United States Nuclear Regulatory Commission regulations in 10 CFR Chapter I (relating to Nuclear Regulatory Commission) shall be met by the ASF or its contracted radiology service.

§ 565.13. Organization and staffing.

- (a) Radiology services provided by the ASF shall be directed by a person who is qualified to assume professional, organizational and administrative responsibility for the quality of services rendered.

- (b) Sufficient adequately trained, certified and experienced personnel shall be available to supervise and conduct the work of the radiology services.

§ 565.15. Records.

Authenticated, dated reports of services performed shall be made a part of the patient's medical record, in a timely manner not to exceed 30 days.

CHAPTER 567. ENVIRONMENTAL SERVICES

INFECTION CONTROL

§ 567.1. Principle.

The ASF shall have a sanitary environment, properly constructed, equipped and maintained to protect surgical patients and ASF personnel from cross-infection and to protect the health and safety of patients.

§ 567.3. Policies and procedures.

- (a) Only authorized persons, who are properly attired, shall be allowed in the surgical area.

- (b) Current written policies and procedures to assure definite and valid infection control shall include the following:

- (1) Medical asepsis.
- (2) Surgical asepsis.
- (3) Sterilization and disinfection, including suitable equipment for routine and rapid sterilization.
- (4) Sterilized materials are packaged, labeled and dated in a consistent manner.
- (5) Housekeeping.
- (6) Cleaning of surgical suites prior to each operation.
- (7) Clean and soiled linen and utility rooms.
- (8) Linen.
- (9) Traffic flow patterns.
- (10) Isolation protocols.
- (11) Staff health status requirements.
- (12) Infection control in-service education for personnel.

(13) Recording and reporting of potential infection.

(14) Bacteriological testing of potential infections, recording results and reporting to the quality assurance committee.

(15) Admission criteria for patients with specific or suspected infections.

(16) Patient postdischarge investigation.

(17) Reporting of communicable diseases as required by § 27.2 (relating to reportable diseases).

SUPPLIES

§ 567.11. Operating suite equipment.

The operating suite shall be adequately equipped with age appropriate equipment for the types of procedures to be performed and the recovery area shall be adequately equipped for the proper care of postanesthesia recovery of surgical patients. All equipment and supplies shall be age and size appropriate for the patients treated. The following equipment shall be available in the operating suite and recovery area.

(1) Suitable surgical instruments customarily available for the planned surgical procedure.

(2) Emergency call system.

(3) Airways, breathing bag and device for the provision of positive pressure rescue breathing.

(4) Cardio-pulmonary drugs and intubation equipment.

(5) Cardiac monitor and defibrillator.

(6) Resuscitator including oxygen and suction equipment.

(7) Tracheostomy and necessary pulmonary reexpansion supplies.

HOUSEKEEPING SERVICES

§ 567.32. Policies and procedures.

Procedures shall be developed for cleaning and care of equipment, for establishment of cleaning schedules, for cleaning methods and for proper use of cleaning supplies and disposal of waste. Suitable equipment shall be provided to facilitate cleaning.

CHAPTER 569. FIRE AND SAFETY SERVICES

GENERAL PROVISIONS

§ 569.2. Fire safety standards.

(a) An ASF shall meet the applicable edition of National Fire Protection Association 101 *Life Safety Code*, which is currently adopted by the Department.

(b) An ASF previously in compliance with prior editions of the *Life Safety Code*, is deemed in compliance with subsequent *Life Safety Codes*, except renovation or new construction shall meet the current edition adopted by the Department.

INTERNAL DISASTER PLAN

§ 569.11. Firefighting service.

The person in charge of the ASF shall establish a workable plan with the nearest fire department for firefighting service. The ASF shall provide the fire department with a current floor plan of the building showing the location of firefighting equipment, exits, patient rooms, storage places of flammable and information that the fire department requires or as may be necessary.

EVACUATION DRILLS

§ 569.21. Fire drills.

(a) Fire, internal disaster and evacuation drills shall be held at least quarterly for ASF personnel and under varied conditions.

(b) The CEO shall:

(1) Ensure that all personnel are trained to perform assigned duties.

(2) Ensure that all personnel are familiar with the use and operation of the firefighting equipment in the ASF.

(3) Enable the chief executive officer to evaluate the effectiveness of the plan.

(c) A written report and evaluation of drills conducted since the last survey shall be kept on file.

(d) The actual evacuation of patients to safe areas during a drill is optional.

SAFETY PRECAUTIONS

§ 569.33. Smoking.

Smoking is not permitted in an ASF.

§ 569.35. General safety precautions.

The following safety precautions shall be met:

(1) Doorways, corridors and stairwells shall be properly lighted and free of obstructions.

(2) Doors into patient rooms may not be locked.

(3) Exit doors may not be locked from the inside while patients are in the ASF.

(4) Doors opening to shafts shall be equipped with self-closing devices and positive latches.

(5) Wastebaskets, cubicle curtains, window shades and drapes shall be rendered flame retardant.

(6) Call bells in the shower, tub room or water closet shall be easily accessible to patients.

(7) Only nonflammable agents may be present in a surgical suite.

CHAPTER 571. CONSTRUCTION STANDARDS

GENERAL PROVISIONS

§ 571.1. Minimum standards.

ASF construction shall be in accordance with the latest edition of the "Guidelines for Design and Construction of Hospital and Health Care Facilities," as published by the American Institute of Architects/Academy of Architecture for Health including those guidelines established for various outpatient facilities. In the alternative, a facility shall meet the construction guidelines for specified types of surgical procedures as listed in Appendix A (relating to alternative construction guidelines). Where renovation or replacement work is performed within an existing facility, all new work or additions shall comply with the requirements for new construction.

§ 571.2. Modifications to HHS requirements.

(a) Life Safety Code means the standard as defined in § 569.2 (relating to fire safety standards).

(b) Adequate storage areas shall be provided to meet the needs of the facility.

(c) Patient privacy shall be provided in preoperative and postoperative areas.

(d) In multistory buildings, where the ASF may be provided on floors other than at grade level, at least one hospital type elevator shall be provided.

(e) Elevators shall conform to "HHS Requirements" and the latest edition of the "American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Stairs."

(f) The Americans with Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213).

SUBMISSION OF PLANS

§ 571.11. Principle.

Plans and specifications shall be submitted to the Division of Safety Inspection of the Department for approval prior to construction of an ASF, in accordance with § 51.5 (relating to building occupancy). Submission shall be in three stages.

§ 571.13. (Reserved).

CHAPTER 573. (Reserved)

§ 573.1. (Reserved).

§ 573.2. (Reserved).

APPENDIX A. ALTERNATIVE CONSTRUCTION GUIDELINES

ENDOSCOPY

1) Office Endoscopy, edited by Bergein F. Overholt and Sarkis J. Chobanian.

2) Planning an Endoscopy Suite for Office and Hospital, by Jerome D. Wayne and Martin E. Rich.

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